

ENBRIDGE COMMERCIAL TRUST

**AMENDED AND RESTATED
TRUST INDENTURE**

**Amended and Restated as of
May 1, 2006**

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ENBRIDGE COMMERCIAL TRUST

THIS AMENDED AND RESTATED TRUST INDENTURE is made as of the 1st day of May, 2006.

BETWEEN:

RICHARD (DICK) AUCHINLECK, J. RICHARD BIRD, J. LORNE BRAITHWAITE, M. ELIZABETH CANNON, PATRICK D. DANIEL, GORDON G. TALLMAN, WESLEY R. TWISS and STEPHEN J. WUORI trustees of the trust constituted by this Trust Indenture, and each individual who on or after the date hereof becomes a trustee of the Trust as herein provided (each of the foregoing named or unnamed individuals, while a trustee of the Trust as herein provided, being hereinafter called a “**Trustee**” and collectively called the “**Trustees**”)

- and -

ENBRIDGE INCOME FUND, an unincorporated trust established pursuant to the laws of Alberta (the “**Fund**”), as the sole holder of Units (as hereinafter defined), and all other persons who on or after the date hereof become holders of Units of the Trust as herein provided (at any time, each person who is at that time a holder of a Unit as herein provided, hereinafter called a “**Unitholder**” and such persons are collectively called the “**Unitholders**”)

- and -

ENBRIDGE MANAGEMENT SERVICES INC., a corporation incorporated under the laws of Alberta (hereinafter called the “**Manager**”)

RECITALS

WHEREAS 201202 Income Fund created and settled the Trust pursuant to the terms of the Original Indenture for the purposes set out in Section 4.1 thereof;

AND WHEREAS the Trustees have agreed to hold and use the Initial Contribution paid by 201202 Income Fund, together with all amounts and assets subsequently received under this Trust Indenture, upon the trusts and in accordance with the provisions hereinafter set forth;

AND WHEREAS it is intended that the Trust shall carry on the Business;

AND WHEREAS the Trustees, in accordance with the terms of the Original Indenture, amended and restated the Original Indenture as of June 30, 2003 and further amended and restated such indenture as of August 18, 2003 (the “2003 Indenture”) and then further amended the 2003 Indenture as of May 4, 2004 and again as of July 1, 2005;

AND WHEREAS the Trustees now consider it desirable to amend the 2003 Indenture to: (i) expand the purpose of the Trust and, consequentially, the scope of permitted activities in which the Trust is entitled to be engaged, and (ii) modify the provisions of the 2003 Indenture relating to the appointment of an auditor for the Trust, and to reflect such amendments in this Trust Indenture;

AND WHEREAS the amendments proposed by the Trustees have been approved by Special Resolution of the holders of Common Units;

NOW THEREFORE THIS INDENTURE WITNESSETH THAT, in consideration of the premises and the mutual and respective covenants and agreements contained herein, the parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions and Interpretation

In this Trust Indenture, except where the context otherwise requires:

- (a) “**Actual Net Offering Price Per Unit**” means the quotient resulting when (i) the difference obtained when the Offering Costs are subtracted from the gross proceeds received by the Fund pursuant to an Offering, is divided by (ii) the number of Ordinary Fund Units issued under such Offering;
- (b) “**Administration Agreement**” means the administrative services agreement dated June 27, 2003 among the Manager, the Fund Trustee, the Fund and the Trust, pursuant to which the Manager provides general administrative services to the Fund, as amended, supplemented or amended and restated from time to time;
- (c) “**affiliate**” has the meaning ascribed thereto in the *Securities Act* (Alberta), as amended from time to time;
- (d) “**annuitant**” means the annuitant, subscriber or beneficiary under a registered retirement savings plan, a registered retirement income fund, a registered education savings plan or a deferred profit sharing plan, all as defined in the Income Tax Act, or any other plan of which a Unitholder acts as trustee or carrier;

- (e) “**associate**” has the meaning ascribed thereto in the *Securities Act* (Alberta), as amended from time to time;
- (f) “**Auditors**” means the firm of chartered accountants, if any, appointed as the auditor of the Trust, from time to time in accordance with the provisions hereof;
- (g) “**Base Amount Per Unit**” has the meaning ascribed thereto in the Fund Trust Indenture;
- (h) “**Business**” means being involved, directly or indirectly, in the business of, or activities pertaining directly or indirectly to, and the ownership, operation and lease of assets and property in connection with, energy infrastructure, and engaging in all activities ancillary or incidental thereto;
- (i) “**Business Day**” means any day other than a Saturday, Sunday or a day on which the principal chartered banks located at Calgary, Alberta are not open for business;
- (j) “**Calendar Year Additional Income Allocation Amount**” means, in respect of a particular calendar year, Income of the Trust minus Preferred Unit Base Income Allocation Amount;
- (k) “**Calendar Year Fund Expenses**” means, with respect to any particular calendar year, those expenses of the Fund in the nature of those referred to in subsections 5.1(c) – (g) of the Fund Trust Indenture which are deductible by the Fund in computing the income of the Fund, pursuant to the Income Tax Act, for such calendar year and which are not otherwise reimbursed by the Trust;
- (l) “**Calendar Year Fund Unit Ratio**” means, with respect to any particular calendar year, the quotient obtained when the aggregate amount of distributions that is paid or payable on the Fund Units in respect of distributions declared or deemed payable for or in respect of the calendar year is divided by the aggregate amount of distributions that is paid or payable in respect of distributions declared or deemed payable for or in respect of the same calendar year on Preferred Units and Fund Units;
- (m) “**Calendar Year Interest Amount**” means, with respect to any particular calendar year, the aggregate amount of interest in respect of Notes required to be included in computing the income of the Fund, as determined pursuant to subsection 5.2(a) of the Fund Trust Indenture;
- (n) “**Calendar Year Preferred Unit Ratio**” means, with respect to any particular calendar year, the difference between one (1) and the Calendar Year Fund Unit Ratio for the calendar year;
- (o) “**Calendar Year Surplus Income Allocation Amount**” means, in respect of a particular calendar year, the amount, if any, by which the Income of the Trust and

Net Realized Capital Gains exceed the aggregate of all amounts that became payable by the Trustees under Section 5.3 and subsection 5.4(a) during the calendar year to Unitholders;

- (p) “**Capital Expenditure Reserve**” means that money, set aside and reserved from time to time, in such amounts as is determined by the Manager or the Trustees to be required by the Trust for foreseeable capital expenditures of the Business;
- (q) “**Chairman**”, “**President**”, “**Chief Executive Officer**”, “**Chief Financial Officer**”, “**Executive Vice-President**”, “**Senior Vice-President**”, “**Vice-President**” and “**Secretary**” shall mean the person(s) holding the respective office from time to time in accordance with Section 7.9;
- (r) “**Closing**”, “**Date of Closing**” and “**Time of Closing**” have the respective meanings given thereto in the Fund Trust Indenture;
- (s) “**Combined Unit Total**” means, in respect of any particular Distribution Period, the total number of Fund Units and Preferred Units issued and outstanding as of the Distribution Record Date for such Distribution Period;
- (t) “**Common Unitholder**” or “**holder of Common Units**” means a person whose name appears on a Register as a holder of Common Units;
- (u) “**Common Units**” means the class of trust units of the Trust created and designated as “Common Units” pursuant to Section 3.1(a) hereof, having the rights, privileges, restrictions and conditions as provided for in this Indenture;
- (v) “**Completion Date**” has the meaning ascribed thereto in subsection 2(h)(iii) of Schedule E attached hereto;
- (w) “**Distributable Cash Flow**” has the meaning ascribed thereto in subsection 5.1(a);
- (x) “**Distribution Payment Date**” means the 15th day of the month which immediately follows a Distribution Period and such other dates as may be determined from time to time by the Trustees or the Manager;
- (y) “**Distribution Period**”:
 - (i) in respect of Common Units, means a calendar month or such other period as may be hereafter determined from time to time by the Trustees or the Manager provided that any such period shall be no longer in duration than three (3) calendar months nor any shorter in duration than one (1) calendar month; and
 - (ii) in respect of Preferred Units, means a calendar month or such other period as may be hereafter determined from time to time by the Trustees or the

Manager provided that any such period shall be no longer in duration than three (3) calendar months nor any shorter in duration than one (1) calendar month, and provided further that in no event shall the Distribution Period in respect of Preferred Units be different in duration than the Distribution Period in respect of the Ordinary Fund Units under the Fund Trust Indenture;

- (z) **“Distribution Period Additional Distribution Amount”** means, in respect of a particular Distribution Period, the aggregate amount of any additional distribution determined and made payable by the Trustees pursuant to Section 5.4;
- (aa) **“Distribution Period Aggregate Base Amount”** means, in respect of a particular Distribution Period, the product obtained when the Base Amount Per Unit is multiplied by the Combined Unit Total;
- (bb) **“Distribution Period Fund Expenses”** means for, or in respect of, a particular Distribution Period, the amounts referred to in subsections 5.1(c) – (g) of the Fund Trust Indenture;
- (cc) **“Distribution Period Fund Unit Ratio”** means, with respect to any particular Distribution Period, the quotient obtained when the number of Fund Units issued and outstanding on the Distribution Record Date for the particular Distribution Period is divided by the Combined Unit Total;
- (dd) **“Distribution Period Interest Amount”** means, with respect to any particular Distribution Period, the amount of interest required to be paid to the Fund in respect of the Notes (as determined pursuant to the terms of the Note Indenture) on the Interest Payment Date relating to that particular Distribution Period, and where in that particular Distribution Period a Principal Payment Amount is paid on the Notes held by the Fund, shall include the Principal Payment Amount paid to the Fund in that particular Distribution Period;
- (ee) **“Distribution Period Preferred Unit Ratio”** means, with respect to any particular Distribution Period, the difference between one (1) and the Distribution Period Fund Unit Ratio;
- (ff) **“Distribution Period Surplus Cash Allocation Amount”** means, in respect of a particular Distribution Period, the amount equal to Distributable Cash Flow minus the Preferred Unit Base Cash Allocation Amount;
- (gg) **“Distribution Record Date”** means the last Business Day in each Distribution Period and such other dates as may be determined from time to time by the Trustees or the Manager;
- (hh) **“Distribution Subordination Period”** means a Distribution Period where (i) A is less than B, where A is the amount that is Distributable Cash Flow plus

Distribution Period Interest Amount minus Distribution Period Fund Expenses, and B is the Distribution Period Aggregate Base Amount; or (ii) a Subordinated Fund Unit does not receive, in respect of that Distribution Period, a cash amount equal to or exceeding the Base Amount Per Unit;

- (ii) “**Enbridge Parties**” has the meaning ascribed thereto in subsection 13.7(a);
- (jj) “**Estimated Net Offering Price**” means the difference obtained when the Estimated Offering Costs are subtracted from the Estimated Offering Proceeds;
- (kk) “**Estimated Offering Costs**” means the Offering Costs that would, in the opinion of the Trustees (including a majority of the Independent Trustees) acting reasonably, likely be incurred in the event that the purchase of the Subject Units were wholly funded through an Offering (assuming that a number of Ordinary Fund Units were issued under such Offering in a number equivalent to the number of Subject Units);
- (ll) “**Estimated Offering Proceeds**” means the estimated gross proceeds that would reasonably likely be realized by the Fund under an Offering, presuming such Offering entailed the issuance of a number of Ordinary Fund Units equivalent to the number of Subject Units and that such Offering was made within the 60-day period following receipt by the Trust of the Liquidity Notice, provided that such estimate shall be based upon the arithmetic average of estimated offering prices likely obtainable by the Fund in connection with such an Offering, such estimated offering prices to be provided by the Investment Bankers;
- (mm) “**Exchangeable Securities**” has the meaning ascribed thereto in the Fund Trust Indenture;
- (nn) “**Experts**” has the meaning ascribed thereto in subsection 12.4(a);
- (oo) “**Financing**” has the meaning ascribed thereto in subsection 2(h)(ii) of Schedule E attached hereto;
- (pp) “**Fund**” means Enbridge Income Fund, a trust constituted by the Fund Trust Indenture;
- (qq) “**Fund Cash Redemption Price**” means the “Cash Redemption Price” of the Fund Units, as defined in the Fund Trust Indenture;
- (rr) “**Fund Delegation Agreement**” means the fund delegation agreement among the Trust, the Fund and the Fund Trustee dated June 30, 2003 and pursuant to which the Trust has been delegated responsibility to provide certain services to the Fund, for and on behalf of the Fund Trustee, as amended or supplemented from time to time;

- (ss) “**Fund Trust Indenture**” means the trust indenture made as of May 22, 2003 and amended and restated as of June 30, 2003 and again as of May 1, 2006, among the Fund Trustee, Enbridge Management Services Inc., as settlor and administrator, and IPL Holdings Inc., as initial unitholder, as the same may be amended, restated or modified from time to time;
- (tt) “**Fund Trustee**” means the “Trustee”, as defined in the Fund Trust Indenture;
- (uu) “**Fund Unit**” means a “Unit”, as defined in the Fund Trust Indenture;
- (vv) “**Fund Unit Additional Income Allocation Amount**” means, in respect of a particular calendar year, the product of the Calendar Year Additional Income Allocation Amount and the Calendar Year Fund Unit Ratio;
- (ww) “**Fund Unit Base Cash Allocation Amount**” means, with respect to a particular Distribution Period, the amount equal to the Distribution Period Interest Amount minus the Distribution Period Fund Expenses;
- (xx) “**Fund Unit Base Income Allocation Amount**” means, with respect to a particular calendar year, the amount equal to the Calendar Year Interest Amount minus the Calendar Year Fund Expenses;
- (yy) “**Governing Authority**” means any stock exchange or any court or governmental department, regulatory body, commission, board, bureau, agency, or instrumentality of Canada, or of any state, province, territory, county, municipality, city, town or other political jurisdiction whether domestic or foreign and whether now or in the future constituted or existing;
- (zz) “**Income of the Trust**” has the meaning ascribed thereto in subsection 5.2(a);
- (aaa) “**Income Tax Act**” means the *Income Tax Act* (Canada) and the regulations thereunder as amended from time to time;
- (bbb) “**Indenture Conferred Duties**” means all rights, powers and duties conferred upon and granted to the Manager pursuant to the terms of this Trust Indenture;
- (ccc) “**Independent Trustee**” means a Trustee who is “independent” in respect of the Manager and any affiliate of the Manager (as the term “independence” is used in National Instrument 58-101 Disclosure of Corporate Governance Practices, *mutatis mutandis*);
- (ddd) “**Initial Contribution**” means the amount of \$400.00 paid by 201202 Income Fund to the Initial Trustee on December 20, 2002 for the purpose of settling the trust constituted hereby;
- (eee) “**Initial Loan**” has the meaning ascribed thereto in Section 4.2;

- (fff) “**Initial Trustee**” means J. Richard Bird, resident in the Province of Alberta;
- (ggg) “**Initial Unitholder**” means 201202 Income Fund, a trust constituted by the Fund Trust Indenture;
- (hhh) “**Initial Units**” means the 40 Units issued by the Trust to 201202 Income Fund in consideration of the Initial Contribution paid thereby for the purpose of settling the Trust;
- (iii) “**Investment Bankers**” mean BMO Nesbitt Burns Inc., CIBC World Markets Inc. and RBC Dominion Securities Inc., or any such other persons in the place and stead of any one or more of the Investment Bankers as may be agreed to between the holders of Preferred Units and the Independent Trustees;
- (jjj) “**Liquidity Closing**” has the meaning ascribed thereto in subsection 2(h)(iii) of Schedule E attached hereto;
- (kkk) “**Liquidity Notice**” has the meaning ascribed thereto in subsection 2(h)(i) of Schedule E attached hereto;
- (lll) “**Liquidity Right**” has the meaning ascribed thereto in subsection 2(h) of Schedule E attached hereto;
- (mmm) “**Management Agreement**” means the agreement dated June 27, 2003 between the Manager and the Initial Trustee, for and on behalf of the Trust, pursuant to which the Manager provides management services to the Trust, as amended, supplemented or amended and restated from time to time;
- (nnn) “**Manager**” means Enbridge Management Services Inc., a corporation incorporated under the laws of Canada, and all successors and permitted assigns thereof;
- (ooo) “**Manager Trustee**” means a Trustee who is not “independent” in respect of the Manager and any affiliate of the Manager (as the term “independence” is used in National Instrument 58-101 Disclosure of Corporate Governance Practices, *mutatis mutandis*);
- (ppp) “**Manager Trustee Proposal**” has the meaning ascribed thereto in Section 7.3(c)(ii);
- (qqq) “**market price**” has the meaning ascribed thereto in the Fund Trust Indenture;
- (rrr) “**meeting of Unitholders**” shall mean and include, as the circumstances require, both an annual meeting of Unitholders and any other meeting of Unitholders;
- (sss) “**Net Realized Capital Gains**” has the meaning ascribed thereto in subsection 5.2(b);

- (ttt) “**Note Indenture**” means the note indenture dated June 30, 2003 as amended and restated August 18, 2003 and entered into between the Trust and the Fund Trustee;
- (uuu) “**Notes**” means, at any time, any Series 1 Notes, Series 2 Notes or Series 3 Notes that are outstanding at such time;
- (vvv) “**Offering**” means a public offering by the Fund of Ordinary Fund Units;
- (www) “**Offering Costs**” means the aggregate of all reasonable costs which are directly attributable to an Offering, including all reasonable underwriter’s fees and expenses, fees and disbursements of legal counsel for the Fund and the Trust, auditors and independent engineers, prospectus filing fees, rating agency fees and printing costs;
- (xxx) “**Ordinary Fund Unit**” means an “Ordinary Unit” as defined in the Fund Trust Indenture;
- (yyy) “**Ordinary Resolution**” means:
- (i) a resolution passed by more than 50% of the votes cast by those Unitholders entitled to vote on such resolution, whether cast in person or by proxy, at a meeting of Unitholders, at which a quorum was present, called (at least in part) for the purpose of approving such resolution, or
 - (ii) a resolution approved in writing, in one or more counterparts, by holders of more than 50% of the votes represented by those Units entitled to be voted on such resolution;
- (zzz) “**Original Indenture**” means the Trust Indenture originally constituting Enbridge Commercial Trust, made as of December 20, 2002 and entered into among J. Richard Bird, as initial trustee, 201202 Income Fund, as settlor and initial unitholder, and Enbridge Management Services Inc., as manager, prior to any amendment thereto or restatement thereof;
- (aaaa) “**Permitted Activities**” has the meaning ascribed thereto in subsection 13.7(a);
- (bbbb) “**person**” means and includes individuals, corporations, limited partnerships, general partnerships, joint stock companies, limited liability corporations, joint ventures, associations, companies, trusts, banks, trust companies, pension funds, business trusts or other organizations, whether or not legal entities and governments and agencies and political subdivisions thereof;
- (cccc) “**Preferred Unit Additional Income Allocation Amount**” means, in respect of a particular calendar year, the product of the Calendar Year Additional Income Allocation Amount and the Calendar Year Preferred Unit Ratio;

- (dddd) “**Preferred Unit Base Cash Allocation Amount**” means, with respect to a particular Distribution Period, the amount determined by multiplying the Distribution Period Preferred Unit Ratio for such Distribution Period by the quotient obtained by dividing the Fund Unit Base Cash Allocation Amount by the Distribution Period Fund Unit Ratio;
- (eeee) “**Preferred Unit Base Income Allocation Amount**” means, with respect to a particular calendar year, the amount determined by multiplying the Calendar Year Preferred Unit Ratio for such calendar year by the quotient obtained by dividing the Fund Unit Base Income Allocation Amount by the Calendar Year Fund Unit Ratio;
- (ffff) “**Preferred Unitholder**” or “**holder of Preferred Units**” means a person whose name appears on a Register as a holder of Preferred Units;
- (gggg) “**Preferred Units**” means the class of trust units of the Trust created and designated as “Preferred Units” pursuant to Section 3.1(a) hereof, having the rights, privileges, restrictions and conditions as provided for in this Indenture;
- (hhhh) “**Principal Payment Amount**” has the meaning ascribed thereto in subsection 5.1(b);
- (iiii) “**Prospectus**” means the final prospectus of the Fund dated June 23, 2003 relating to an initial public offering of Ordinary Fund Units filed with various securities commissions or similar authorities in Canada to qualify the issue and distribution of the Ordinary Fund Units, and includes any amendment to such final prospectus;
- (jjjj) “**Purchase Price**” has the meaning ascribed thereto in subsection 2(h)(iv) of Schedule E attached hereto;
- (kkkk) “**Redemption Price**” has the meaning ascribed thereto in Section 6.6;
- (llll) “**Register**” has the meaning ascribed thereto in Section 3.11;
- (mmmm) “**Reserve Amount**” has the meaning ascribed thereto in subsection 5.1(a)(vii);
- (nnnn) “**security**”, as applicable in the particular context, has the meaning ascribed thereto in the *Securities Act* (Alberta), as amended from time to time, and “**securities**” has a corresponding meaning;
- (oooo) “**Series 1 Notes**” means the notes, designated as Series 1, to be issued by the Trust from time to time pursuant to the Note Indenture, which notes will be obligations of the Trust that rank after any indebtedness of the Trust which, by the terms of the instrument creating or evidencing the same, is not expressed to rank in right of payment in subordination to or *pari passu* with the indebtedness evidenced by such notes;

- (pppp) “**Series 2 Notes**” means the notes, designated as Series 2, to be issued by the Trust from time to time pursuant to the Note Indenture, as full or part payment of Redemption Prices payable from time to time pursuant to Section 6.5, which notes will be obligations of the Trust that rank after any indebtedness of the Trust which, by the terms of the instrument creating or evidencing the same, is not expressed to rank in right of payment in subordination to or *pari passu* with the indebtedness evidenced by such notes;
- (qqqq) “**Series 3 Notes**” means the notes, designated as Series 3, to be issued by the Trust from time to time pursuant to the Note Indenture, as full or part payment for the redemption of the Series 1 Notes, which notes will be obligations of the Trust that rank after any indebtedness of the Trust which, by the terms of the instrument creating or evidencing the same, is not expressed to rank in right of payment in subordination to or *pari passu* with the indebtedness evidenced by such notes;
- (rrrr) “**Special Resolution**” means;
- (i) a resolution passed by more than $66\frac{2}{3}\%$ of the votes cast by those Unitholders entitled to vote on such resolution, whether cast in person or by proxy, at a meeting of Unitholders, at which a quorum was present, called (at least in part) for the purpose of approving such resolution, or
 - (ii) a resolution approved in writing, in one or more counterparts, by holders of more than $66\frac{2}{3}\%$ of the votes represented by those Units entitled to be voted on such resolution;
- (ssss) “**Subject Units**” has the meaning ascribed thereto in subsection 2(h)(i) of Schedule E attached hereto;
- (tttt) “**Subordinated Fund Unit**” means a “Subordinated Unit” as defined in the Fund Trust Indenture;
- (uuuu) “**Transfer Agent**” means such person, initially to be the Manager, as may from time to time be appointed by the Trust to act as registrar and transfer agent of the Units together with any sub-transfer agent duly appointed by the Transfer Agent;
- (vvvv) “**Trust**” means the trust established hereby;
- (wwww) “**Trust Indenture**”, “**Indenture**”, “**hereto**”, “**herein**”, “**hereof**”, “**hereby**”, “**hereunder**” and similar expressions refer to this Amended and Restated Trust Indenture, including the Schedules hereto, originally made as of December 20, 2002 as amended and restated as of June 30, 2003 and as further amended and restated as of August 18, 2003, amended as of May 3, 2004 and July 1, 2005 and amended and restated again as of May 1, 2006, as the same may be further amended, restated or modified from time to time, and includes every instrument supplemental or ancillary to or in implementation of this Trust Indenture and,

except where the context otherwise requires, does not refer to any particular Article, Section or other portion hereof or thereof;

- (xxxx) “**Trust Property**”, at any time, means all of the money, properties and other assets of any nature or kind whatsoever as are, at such time, held by the Trust or by the Trustees on behalf of the Trust;
- (yyyy) “**Trustee**” and “**Trustees**” have the meanings ascribed thereto in the preamble to this Trust Indenture;
- (zzzz) “**Trustees’ Regulations**” has the meaning ascribed thereto in Section 8.3;
- (aaaa) “**Unit Certificate**” means a certificate, in the form approved by the Trustees, evidencing one or more Units, issued and certified in accordance with the provisions hereof;
- (bbbb) “**Unitholder**” or “**holder of Units**” means a person whose name appears on a Register as a Common Unitholder or a Preferred Unitholder;
- (cccc) “**Units**” includes both Common Units and Preferred Units, and “**Unit**” means a Common Unit or Preferred Unit, as the case may be and the context so requires; and
- (dddd) any reference to “**property**” or “**property of the Trust**” or “**assets**” or “**assets of the Trust**” includes, in each case, the Trust Property.

1.2 References to Acts Performed by the Trust or the Trustees

For greater certainty, where any reference is made in this Trust Indenture to:

- (a) an act to be performed by the Trust or to rights of the Trust, such reference shall be construed and applied for all purposes to refer to (i) an act to be performed by the Trustees on behalf of the Trust or by some other person duly authorized to do so by the Trustees or pursuant to the provisions hereof, or to (ii) rights of the Trustees, in their capacity as Trustees of the Trust, as the case may be; and
- (b) actions, rights or obligations of the Trustees, such reference shall be construed and applied for all purposes to refer to actions, rights or obligations of the Trustees in their capacity as Trustees of the Trust, and not in their other capacities (if any), unless the context otherwise requires.

1.3 Interpretation

In this Trust Indenture, unless herein otherwise expressly provided or unless the context otherwise requires, words importing the singular number include the plural, and vice-versa, and words importing a gender shall include the feminine, masculine and neuter

genders. Where the word “including” or “includes” is used in this Trust Indenture it means “including without limitation” or “includes without limitation”, respectively. Any reference to any document shall include a reference to any schedule, amendment or supplement thereto or any agreement in replacement thereof, all as permitted under such document.

A reference herein to any statute includes every regulation (and other similar ancillary instrument having the force of law) made pursuant thereto, all amendments to the statute or to any such regulation (or other similar ancillary instrument) in force from time to time, and any statute or regulation (or other similar ancillary instrument) which supplements or supersedes such statute or regulation (or other similar ancillary instrument); and a reference to any section or provision of a statute includes all amendments to such section or provision, as made from time to time, and all sections or provisions which supplement or supersede such section or provision referred to herein.

1.4 Headings for Reference Only

The division of this Trust Indenture into Articles, Sections and Schedules, the provision of a Table of Contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Trust Indenture. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Trust Indenture.

1.5 Day Not a Business Day

Except as otherwise set out herein, in the event that any day on which any amount is to be determined or any other determination is to be made or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such other determination shall be made or such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day. This Section is not applicable to Sections 5.1, 5.2, 5.3, 5.4, 5.8, 5.9 and 5.10 and to defined terms used in such Sections (except with respect to the definition of Distribution Payment Date and with respect to any action to be taken on a Distribution Payment Date as set forth in subsection 5.1(b) and subsections 5.4(c) and (d)).

1.6 Time of the Essence

Time shall be of the essence in this Trust Indenture.

1.7 Governing Law

This Trust Indenture and the Unit Certificates shall be construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein. The parties hereto hereby irrevocably submit and attorn to the jurisdiction of the courts of the Province of Alberta.

1.8 Schedules

The Schedules attached hereto are incorporated by reference herein and form an integral part of this Trust Indenture.

1.9 Status of Enbridge Income Fund

The Fund acknowledges and agrees that it is a party to this Indenture not only in its capacity as a Unitholder but also as a covenantor hereunder in respect of certain provisions hereof, including, in particular, subsection 2(g) of Schedule E, and the Fund further agrees that it shall duly, punctually and faithfully perform and fulfill such covenants and obligations. Accordingly, in the event that the Fund should cease to be a Unitholder, the Fund hereby acknowledges that such occurrence shall in no way on its own be construed as, or have the effect of, releasing or discharging the Fund as a party hereunder but rather, notwithstanding such an occurrence, the Fund shall at all times remain a party hereto.

1.10 Approvals by the Trustees

Where any provision of this Indenture refers to any decisions or determinations required to be made, or matters to be approved, by the Trustees or the Independent Trustees, as the case may be, then, unless otherwise expressly provided, all such decisions, determinations or approvals shall be decided, determined or approved when done so by the affirmative vote of a majority of the Trustees or the Independent Trustees, as the case may be, entitled to vote in respect of the matter.

ARTICLE 2 DECLARATION OF TRUST

2.1 Initial Contribution and Settlement of Trust

The Initial Unitholder paid, concurrent with the execution of the Original Indenture, the Initial Contribution to the Initial Trustee for the purpose of creating and settling the Trust and, in consideration therefor, the Initial Unitholder was issued 40 units in the Trust. Receipt of the Initial Contribution has been acknowledged by the Initial Trustee.

2.2 Declaration of Trust

The Trustees hereby agree to hold legal title to, use and administer the Trust Property in trust for the benefit of the Unitholders, their permitted assigns and personal representatives upon the trusts and subject to the terms and conditions hereinafter declared and set forth, such trust to constitute the Trust hereunder.

2.3 Name of Trust

The Trust shall be known and designated as “Enbridge Commercial Trust” and, whenever lawful and convenient, the property of the Trust shall be held and the affairs of the Trust shall be conducted and transacted under that name. The Trustees may determine to use such other designation or may adopt such other name as the Trustees deem appropriate, and the Trust may hold property and conduct and transact its affairs under such other designation or name.

Once neither Enbridge Management Services Inc. nor any of its affiliates is any longer the manager of the Trust pursuant to the Management Agreement, Enbridge Management Services Inc. or any affiliate thereof has the right, at any time, to make a request to the Trust, in writing, requiring that any reference to “Enbridge” in the name of the Trust and the Fund and each of their respective affiliates and associates, be removed, and the Trust hereby covenants that upon receipt of such notice:

- (a) the Trust shall, and shall exercise all best efforts to cause each of its affiliates and associates to, promptly proceed to take all necessary steps as may be required to remove any reference to “Enbridge” in the name of the Trust and in the name of each affiliate and associate thereof; and
- (b) the Trust shall promptly, and shall exercise all best efforts to cause each of its affiliates and associates to promptly: (i) cease, for all purposes, to use the name “Enbridge” or any words similar thereto; (ii) amend this Indenture and the Fund Trust Indenture, file such articles of amendment, modify or amend such partnership agreements and modify or amend all such other constating documents of any person as shall be required in order to change the name of the Trust, the Fund and any of their respective affiliates and associates, to a name which does not include the name “Enbridge” or any similar words thereto; and (iii) execute and deliver all instruments necessary to change the name in each public registry where the name of the Trust and the Fund, and each of their respective affiliates and associates shall have been registered and to disclaim any right, title or interest in or to the name “Enbridge”,

provided, in any event, that all of the foregoing steps shall be taken and completed within three months of the aforementioned request by Enbridge Management Services Inc. or any affiliate thereof.

2.4 Head Office

The head office of the Trust shall be located at Calgary, Alberta, or such other place or places in Canada as the Trustees may from time to time designate and will initially be located at 3000, 425 – 1st Street S.W., Calgary, Alberta, T2P 3L8.

2.5 Nature of the Trust

The Trust is an unincorporated trust, established for the purposes specified in Section 4.1. The Trust is not, is not intended to be, shall not be deemed to be and shall not be treated as, a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company; further, neither the Trustees, nor the Manager, nor the Unitholders, nor any of them, shall be, or be deemed to be, treated in any way whatsoever as liable or responsible hereunder as partners or joint venturers. Neither the Trustees, nor the Manager, shall be, or be deemed to be, agents of the Unitholders. The relationship of the Unitholders to the Trustees shall be solely that of beneficiaries of the Trust and their rights as Unitholders shall be limited to those expressly conferred upon them by this Trust Indenture.

2.6 Rights of Unitholders and Ownership of Assets of the Trust

- (a) Except as otherwise expressly provided for herein, no Unitholder shall be entitled to interfere with, or give any direction to, the Trustees or the Manager with respect to the affairs of the Trust or in connection with the exercise of any powers or authorities conferred upon the Trustees or the Manager under this Trust Indenture.
- (b) The legal ownership of the Trust Property and the right to conduct the affairs of the Trust are vested exclusively in the Trustees, or such other persons as the Trustees may determine or as are permitted in accordance with the terms hereof, and the Unitholders shall have no interest therein other than the interest specifically set forth in this Trust Indenture and they shall have no right to compel or call for any redemption of Units or any partition, division, dividend or distribution of the Trust Property, except as specifically provided herein.
- (c) The Units shall be personal property and shall confer upon the Unitholders only the interest and rights attributable to such Units as specifically set forth in this Trust Indenture.

2.7 Unitholders Bound

This Trust Indenture shall be binding upon all persons who become Unitholders from time to time. By acceptance of a Unit Certificate representing any Units, the Unitholder thereof shall be deemed to agree to be bound, and shall be so bound, by this Trust Indenture.

ARTICLE 3 UNITS OF THE TRUST

3.1 Nature of Units

- (a) The beneficial interests in the Trust shall be represented and constituted by two classes of units described and designated as “**Common Units**” and “**Preferred Units**”, respectively, and (i) each holder of Common Units shall be entitled to the rights and be subject to the limitations, restrictions and conditions pertaining to the Common Units as set out in this Trust Indenture, including those set forth in Section 1 of Schedule E hereto which is incorporated herein by reference; and (ii) each holder of Preferred Units shall be entitled to the rights and be subject to the limitations, restrictions and conditions pertaining to the Preferred Units as set out in this Trust Indenture, including those set forth in Section 2 of Schedule E hereto which is incorporated herein by reference. For greater certainty, the main purposes for the existence of the Units together with the particular terms of each Unit, as set forth in this Trust Indenture, are to enhance the cash flow stability of the Ordinary Fund Unit distributions by ensuring the efficacy of the subordination feature of the Subordinated Units and to achieve further enhancement of the marketability to the public of the Ordinary Fund Units by permitting Enbridge Inc., through its ownership of Preferred Units, to demonstrate a long-term commitment to the Fund and confidence in the stability of the cash flows from the assets of the Fund.
- (b) The 40 units in the Trust originally issued upon settlement of this Trust to the Initial Unitholder, and which are now held by the Fund, are and shall be deemed to be 40 Common Units.
- (c) The issued and outstanding Units may be subdivided or consolidated from time to time, as determined in the discretion of the Trustees.

3.2 Authorized Number of Units

The aggregate number of Common Units which are authorized and may be issued hereunder is unlimited. The aggregate number of Preferred Units which are authorized and may be issued hereunder is unlimited.

3.3 Issue of Units

- (a) Units may be issued at the times, to the persons, for the consideration and on the terms and conditions that the Trustees determine in their absolute discretion. The Trustees may, among other things, provide for the payment by the Trust of fees and commissions to persons in consideration of their subscribing or agreeing to subscribe, whether absolutely or conditionally, for Units or of their agreeing to produce subscriptions therefor, whether absolute or conditional.

- (b) Units are only to be issued as fully paid and are not to be subject to future calls or assessments, provided however that Units may be issued for a consideration payable in instalments and the Trust may take security over any Units so issued as security for unpaid instalments and assign the benefit of all or part of such security.
- (c) The consideration for any Unit shall be paid in money, property or past services that are not less in value than the fair equivalent of the money that the Trust would have received if the Unit had been issued for money.

3.4 No Pre-Emptive Rights

There are no pre-emptive rights attaching to the Units.

3.5 Consolidation of Units

Immediately after any distribution of additional Units of a particular class to Unitholders pursuant to Section 5.8, the number of the outstanding Units of that class will be consolidated without further act of the Trustees or Unitholders such that each Unitholder will hold after the consolidation the same number of Units of that class as the Unitholder held before the distribution of such additional Units. In this case, each Unit Certificate representing a number of Units of that particular class prior to the distribution of additional Units of such class is deemed to represent the same number of Units of such class after the distribution of such additional Units and the consolidation. Notwithstanding the foregoing, in the case of any distribution of additional Preferred Units pursuant to Section 5.8, a consolidation under this Section shall only be effected where the Ordinary Fund Units have been consolidated under Section 3.6 of the Fund Trust Indenture consequent upon a distribution of Ordinary Fund Units effected under Section 5.8 of the Fund Trust Indenture in respect of the same Distribution Period for which the distribution of such additional Preferred Units has been made.

3.6 Unit Certificates

Each Unitholder or his duly authorized agent is entitled to a Unit Certificate bearing an identifying serial number in respect of the particular Units (whether Common Units or Preferred Units) held by him, signed in the manner hereinafter prescribed. The Trust is not bound to issue more than one Unit Certificate in respect of a Unit held jointly or in common by two or more persons and delivery of a Unit Certificate to one of them registered in joint names shall be sufficient delivery to all.

3.7 Execution of Unit Certificates

Unit Certificates shall be signed manually by at least one Trustee or officer of the Manager holding office at the time of signing, provided, however, that if the Trustees have appointed a registrar and transfer agent, then signatures of Trustees or officers of the Manager required on Unit Certificates may be printed or otherwise mechanically reproduced thereon and Unit Certificates so signed are as valid as if they had been signed

manually. Where a Transfer Agent other than the Manager has been appointed, Unit Certificates shall be countersigned manually by or on behalf of the Transfer Agent. If a Unit Certificate contains a printed or mechanically reproduced signature of a person, then the Trust may issue the Unit Certificate even though the person has ceased to be a Trustee or an officer of the Manager and such Unit Certificate is as valid as if the person were a Trustee or an officer of the Manager at the date of its issue.

3.8 Certificate Fee

The Trustees may establish a reasonable fee to be charged for every Unit Certificate issued.

3.9 Form of Unit Certificate

Unit Certificates shall be in such form as is from time to time authorized by the Trustees. The definitive form of the Unit Certificates shall be in the English language and may, in the discretion of the Trustees, also be in the French language. The Unit Certificates may be engraved, printed or lithographed, or partly in one form and partly in another, as the Trustees may determine.

Until another form of Unit Certificate for the Common Units is authorized by the Trustees, the form of Unit Certificate set forth in Schedule C annexed hereto and incorporated herein by reference is hereby approved as the Unit Certificate for the Common Units to be issued hereunder.

Until another form of Unit Certificate for the Preferred Units is authorized by the Trustees, the form of Unit Certificate set forth in Schedule D annexed hereto and incorporated herein by reference is hereby approved as the Unit Certificate for the Preferred Units to be issued hereunder.

3.10 Fractional Units

If as a result of any act of the Trustees hereunder any person becomes entitled to a fraction of a Unit, such person shall not be entitled to receive a Unit Certificate therefor. Fractional Units shall not, except to the extent that they may represent in the aggregate one or more whole Units held by the same holder, entitle the holders thereof to notice of, or to attend or to vote at, meetings of Unitholders. Subject to the foregoing, such fractional Units shall have attached thereto the rights, restrictions, conditions and limitations attaching to whole Units in the proportion that they bear to a whole Unit.

3.11 Unit Register and Transfer Ledgers to be Maintained

- (a) The Trustees hereby appoint the Manager to act as transfer agent and registrar for the Units and the Manager hereby accepts such appointment. A register (the “**Register**”) shall be kept by the registrar and transfer agent, on behalf and under the direction of the Trustees, in respect of each of the classes of Units of the Trust,

and each Register shall contain the names and addresses of Unitholders of the particular class to which the Register pertains, the respective numbers of Units held by such Unitholders, the certificate numbers of the Unit Certificates held by them and a record of all transfers thereof. In lieu of the Manager, the Trustees may appoint one or more persons who may, but need not be, chartered banks or trust companies, to act as transfer agents and to act as registrars for Units and may provide for the transfer of Units in one or more places within Canada.

- (b) The Transfer Agent shall keep all necessary registers and other books (which may be kept in a bound or loose-leaf book or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device) for recording original issuances, registration and transfers of the Units. No Unit Certificates representing Units shall be valid unless executed in accordance with Section 3.7. Subject to the further provisions of this Trust Indenture concerning record dates and otherwise, only persons whose Units are recorded on a Register shall be entitled to vote or to receive distributions or otherwise exercise or enjoy the rights of Unitholders.

3.12 Entry on Register

Upon any issue of Units, the name of the subscriber or other person entitled to such Units shall be promptly entered on the appropriate Register as the owner of the number of Units issued to such subscriber or other person, or if the subscriber is already a Unitholder, the appropriate Register shall be amended to include its additional Units.

3.13 Transfer of Units

Units are transferable at any time and from time to time by the Unitholder by endorsement and delivery of the Unit Certificates representing the Units to be transferred, subject, however, to such Unitholder receiving approval of such transfer by the Trustees and to compliance by such Unitholder with all applicable laws pertaining to such transfer. No such transfer shall be recorded on a Register unless the transferor has executed the transfer form as reproduced in the Unit Certificate and the transferee has delivered to the Trust or the Transfer Agent (if one has been appointed) a Unit Certificate representing the Units transferred and, if requested by the Trustees, a declaration as to resident status under the Income Tax Act. Subject to the foregoing, such transfers shall be recorded on the appropriate Register and a new Unit Certificate for the Units so transferred shall be issued to the transferee and, in case of a transfer of only part of the Units represented by any Unit Certificate, a new Unit Certificate for the remaining Units shall be issued to the transferor.

3.14 Successors in Interest to Unitholders

Upon a person becoming entitled to any Units as a consequence of the death, bankruptcy or incapacity of any Unitholder or otherwise by operation of law, such person shall be recorded in the appropriate Register as the holder of such Units and shall receive a

new Unit Certificate therefor upon production of evidence of such entitlement satisfactory to the Transfer Agent (or if no Transfer Agent, then to the Trustees) and delivery of the existing Unit Certificate to the Transfer Agent (or if no Transfer Agent, then to the Trustees), but until such record is made, the Unitholder of record shall continue to be and be deemed to be the holder of such Units for all purposes whether or not the Trust, the Trustees, the Manager or the Transfer Agent shall have actual or other notice of such death, bankruptcy, incapacity or other event.

3.15 Units Held Jointly or in Fiduciary Capacity

The Trust may treat two or more persons holding any Unit as joint owners of the entire interest therein unless the ownership is expressly otherwise recorded on a Register, but no entry shall be made in a Register or on any Unit Certificate that any person is in any other manner entitled to any future, limited or contingent interest in any Unit; provided, however, that any person recorded in a Register as a Unitholder may, subject to the provisions herein contained, be described in such Register or on any Unit Certificate as a fiduciary of any kind and any customary words may be added to the description of the holder to identify the nature of such fiduciary relationship; provided further that none of the Trust, the Trustees, the Manager or the Transfer Agent shall be required to recognize a person as having any interest in the Unit other than the person recorded in the Register as the holder of such Unit.

3.16 Performance of Trusts

None of the Trustees, officers of the Trust, the Manager, Unitholders, the Transfer Agent or other agent of the Trust shall have a duty to inquire into any claim that a transfer of a Unit was or would be wrongful or that a particular adverse person is the owner of or has an interest in the Unit or any other adverse claim, or be bound to see to the performance of any trust, express or implied or of any charge, pledge or equity to which any of the Units or any interest therein are or may be subject, or to ascertain or inquire whether any sale or transfer of any such Units or interest therein by any Unitholder or their personal representatives is authorized by such trust, charge, pledge or equity, or to recognize any person as having any interest therein, except for the person recorded as Unitholder of such Unit.

3.17 Lost Unit Certificates

In the event that any Unit Certificate is lost, stolen, destroyed or mutilated, the Trustees may authorize the issuance of a new Unit Certificate for the same number of Units in lieu thereof. The Trustees may in their discretion, before the issuance of such new Unit Certificate, require the owner of the lost, stolen, destroyed or mutilated Unit Certificate, or the legal representative of the owner, to make such affidavit or statutory declaration, setting forth such facts as to the loss, theft, destruction or mutilation as the Trustees deem necessary and may require the applicant to supply to the Trust a “lost certificate” or similar bond in such reasonable amount as the Trustees direct indemnifying

the Trust, Trustees and the Transfer Agent for issuing such new Unit Certificate. The Trustees shall have the power to acquire from an insurer or insurers a blanket lost certificate security bond or bonds in respect of the replacement of lost, stolen, destroyed or mutilated Unit Certificates. The Trust shall pay all premiums and other sums of money payable for such purpose out of the property of the Trust with such contribution, if any, by those insured as may be determined by the Trustees.

3.18 Death of Unitholders

The death of a Unitholder during the continuance of the Trust shall not terminate the Trust or give the personal representatives or the heirs of the estate of the deceased Unitholder a right to an accounting or to take any action in the courts or otherwise against other Unitholders or the Trustees, officers of the Trust, the Manager or the property of the Trust, but shall only entitle the personal representatives or the heirs of the estate or succession of the deceased Unitholder to demand and receive, pursuant to the provisions of Section 3.14, a new Unit Certificate for Units in place of the Unit Certificate held by the deceased Unitholder, and upon the acceptance thereof such personal representatives or the heirs of the estate or succession of the deceased Unitholder shall succeed to all rights of the deceased Unitholder under this Trust Indenture.

3.19 Unclaimed Payments

In the event that the Trustees hold any amounts to be paid to Unitholders under Article 5, Article 6, Article 11, or otherwise hereunder, because such amounts are unclaimed or cannot be paid for any reason, neither the Trustees nor any distribution disbursing agent shall be under any obligation to invest or reinvest the same and shall only be obligated to hold the same in a current or other non-interest bearing account with a Canadian chartered bank or trust company, pending payment to the person or persons entitled thereto. The Trustees shall, as and when required by law, and may at any time prior to such required time, pay all or part of such amounts so held to a court in the province where the Trust has its head office (or to such other suitable government official or agency in the province where the Trust has its head office) whose receipt shall be a good release, acquittance and discharge of the obligations of the Trustees with respect thereto.

ARTICLE 4 PURPOSES OF TRUST

4.1 Purposes and Activities of Trust

The purposes and activities of the Trust are restricted to:

- (a) the direct or indirect conduct of the business of, or activities pertaining directly or indirectly to, energy infrastructure, including the direct or indirect ownership, operation and lease of assets and property in connection with the business of, or

activities pertaining directly or indirectly to, energy infrastructure, and entering into the transactions contemplated by the Prospectus;

- (b) acquiring, owning, holding, leasing, transferring, disposing of, investing in, operating and otherwise dealing with assets, securities (whether debt or equity) and other interests or properties of whatever nature or kind of or issued by affiliates, associates, or other persons involved, directly or indirectly, in the business of, or in activities pertaining directly or indirectly to, energy infrastructure and/or other related businesses; and, for greater certainty, the Trust is expressly authorized to invest, directly or indirectly, in one or more partnerships (whether limited or general) as a partner thereof;
- (c) borrowing at any time and from time to time any sum of money, or otherwise incurring any indebtedness, for any of the purposes set forth in paragraphs 4.1(a) and 4.1(b) above;
- (d) the guaranteeing of any debts or liabilities, present or future, direct or indirect, absolute or contingent, matured or not of any affiliate, associate or other person for any of the purposes set forth in paragraphs 4.1(a) and 4.1(b) above;
- (e) temporarily holding cash and other short term investments in connection with and for the purposes of the Trust's activities, including paying administration and trust expenses, paying any amounts required in connection with the redemption of Units and making distributions to Unitholders;
- (f) issuing Units, instalment receipts, and other securities (whether debt or equity) of the Trust (including securities convertible into or exchangeable for Units or other securities of the Trust, or warrants, options or other rights to acquire Units or other securities of the Trust), for the purposes of:
 - (i) obtaining funds to conduct the activities described in paragraphs 4.1(a) and 4.1(b) above, including raising funds for further acquisitions;
 - (ii) repayment of any indebtedness or borrowings of the Trust;
 - (iii) establishing and implementing Unitholder rights plans, distribution reinvestment plans, Unit purchase plans, and incentive option and other compensation plans, if any, established by the Trust;
 - (iv) satisfying obligations to deliver securities of the Trust, including Units, pursuant to the terms of securities convertible into or exchangeable for such securities of the Trust, whether or not such convertible or exchangeable securities have been issued by the Trust;
 - (v) carrying out any of the transactions contemplated by the Prospectus and satisfying all obligations in connection with such transactions; and

- (vi) making non-cash distributions to Unitholders as contemplated by this Trust Indenture, including distributions pursuant to distribution reinvestment plans, if any, established by the Trust;
- (g) repurchasing or redeeming Units or other securities of the Trust, subject to the provisions of this Trust Indenture and applicable law; and
- (h) engaging in all activities ancillary or incidental to any of those activities set forth in paragraphs 4.1(a) through 4.1(g) above.

4.2 Initial and First Subsequent Investments

Immediately following the initial purchase by, and sale to, 201202 Income Fund of 40 Units for the purpose of settling the trust constituted hereby, the Initial Trustee, on behalf of the Trust, acknowledges that it borrowed from 201202 Income Fund, by way of loan transaction, the principal sum of \$7,600 bearing interest at a rate of 1% per annum (the “**Initial Loan**”). The Trustees acknowledge that they have used all or substantially all of the Initial Contribution and the proceeds from the Initial Loan to subscribe for and purchase (a) units, as a limited partner, in Enbridge Income Partners LP and (b) common shares of Enbridge Income Partners GP Inc.

In addition to the foregoing, the Trustees shall use the proceeds received at Closing from the further sale of Units and Series 1 Notes in order to subscribe for and purchase additional units (both directly and indirectly) in Enbridge Income Partners LP which shall then use the proceeds for the purposes described in the Prospectus, being principally to fund the direct or indirect acquisition from Enbridge Inc. (or its affiliates) of a 50% interest in Alliance Pipeline Limited Partnership and a 100% interest in Enbridge Pipelines (Saskatchewan) Inc., with the balance of the proceeds to be held and utilized by the Manager, in its discretion, for any purpose not inconsistent with this Trust Indenture and the purposes of the Trust set out in Section 4.1.

4.3 Other Investments

Money or other property received by the Trust, or by the Trustees or the Manager on behalf of the Trust, may be used, at any time and from time to time, for any purpose not inconsistent with this Trust Indenture and the purposes of the Trust set out in Section 4.1. Funds comprising the Reserve Amount shall be available for use at any time and from time to time, by the Trust, in the absolute discretion of the Trustees, for and in connection with any of the purposes and activities of the Trust as authorized hereunder.

4.4 Acquisition and Investment Guidelines

Apart from those acquisitions and investments set forth in Section 4.2, all future acquisitions and investments by the Trust will be reviewed and evaluated in accordance with the following guidelines:

- (a) each asset to be acquired, or investment to be made therein, must, in the reasonable opinion of the Trustees, be reasonably likely to result in an increase in Distributable Cash Flow on a per Unit basis;
- (b) each asset to be acquired (whether directly or indirectly) shall, in the reasonable opinion of the Trustees, assuming regular maintenance and upkeep in respect of such asset, have an expected useful life (following such acquisition by the Trust) which is long enough in duration for the investment therein to conform with the objective of the Trust to have such asset provide sustainable long-term cash flows to the Trust;
- (c) the commercial, contractual or regulatory environment of each asset to be acquired (whether directly or indirectly) shall, in the reasonable opinion of the Trustees, provide a high degree of definition and predictability as to the cash flow to be generated by the asset so as to conform with the objective of the Trust to have such asset provide sustainable long-term cash flows to the Trust; and
- (d) each asset to be acquired, or investment to be made therein, shall be reviewed and approved by the Trustees unless a party to such transaction is a Manager Trustee, the Manager or any affiliate thereof, in which case the transaction shall be reviewed and approved by the Independent Trustees.

ARTICLE 5 DISTRIBUTIONS

5.1 Computation of Distributable Cash Flow of the Trust

- (a) The “**Distributable Cash Flow**” for, or in respect of, a Distribution Period shall be equal to:
 - (i) all cash amounts which are received by the Trust for, or in respect of, such Distribution Period, including amounts on account of interest, income, dividends, returns of capital, and proceeds from debt or equity financings (including re-financings), plus
 - (ii) any amounts allocated, in the discretion of the Trustees, from the Reserve Amount for use by the Trust in respect of such Distribution Period;
- less:
- (iii) all liabilities of the Trust which, in the opinion of the Manager or the Trustees, may reasonably be considered to have accrued and become owing in respect of, or which relate to, such Distribution Period or a prior Distribution Period if not accrued in such prior period including, without limitation, any interest payable by the Trust on any indebtedness of the

Trust (including all interest accrued for and in respect of such Distribution Period on the Series 1 Notes, the Series 2 Notes (if any) and the Series 3 Notes (if any), the whole as reasonably estimated by the Manager);

- (iv) the aggregate of all cash amounts used, or to be used, in respect of the redemption or repurchase of Units occurring during such Distribution Period;
 - (v) all amounts which relate to the repayment of the principal amount of any indebtedness of the Trust during such Distribution Period, including any Principal Payment Amounts;
 - (vi) any amounts, in addition to those set forth in subsections 5.1(a)(iii), (iv) and (v), which the Manager may reasonably consider to be necessary to provide for the payment of any liabilities which have been or will be incurred by the Trust, including any tax liability of the Trust (to the extent that such liabilities have not otherwise been taken into account in determining the Distributable Cash Flow hereunder); and
 - (vii) any amount as determined in the discretion of the Manager for reasonable reserves to be maintained in connection with pursuing any purpose or activity of the Trust which is not inconsistent with this Trust Indenture and the purposes of the Trust set out in Section 4.1 (herein referred to as the “**Reserve Amount**”), including amounts reserved for Capital Expenditure Reserves or amounts reserved for payment of distributions in subsequent Distribution Periods.
- (b) On or before each Distribution Record Date, the Trustees shall determine, at their entire discretion, the amount, if any, in respect of the current Distribution Period which shall be set aside to repay the principal amount of the Series 1 Notes on the Distribution Payment Date next succeeding the Distribution Record Date (the “**Principal Payment Amount**”). The proportionate share, if any, of the Principal Payment Amount of each holder of Series 1 Notes shall be determined by multiplying the Principal Payment Amount by the quotient obtained when the unpaid principal amount of the Series 1 Notes held by such holder of Series 1 Notes is divided by the unpaid principal amount of all Series 1 Notes. The Trustees shall pay to each holder of Series 1 Notes the applicable proportionate share, if any, of such Principal Payment Amount on the Distribution Payment Date next succeeding the Distribution Record Date.

5.2 Computation of Income and Net Realized Capital Gains

- (a) The “**Income of the Trust**” for any year shall be the income of the Trust for that year computed in accordance with the provisions of the Income Tax Act; provided,

however, that capital gains and capital losses shall be excluded and provided further that:

- (i) the portion of the Trust's income comprised of taxable dividends received from corporations resident in Canada shall be calculated on the basis that the amount included in the Trust's income is the actual amount of the dividend received, which excludes the gross-up adjustment provided in paragraph 82(1)(b) of the Income Tax Act;
 - (ii) no amount shall be deducted in respect of amounts paid or payable to Unitholders; and
 - (iii) the Trust shall claim the maximum amount of deductions available to it in computing the Income of the Trust for the year, without generating a loss and after taking into account all losses (other than net capital losses) of the Trust for prior years that may be deducted in computing the Trust's taxable income under the Income Tax Act for that year.
- (b) The "**Net Realized Capital Gains**" of the Trust for any year shall be determined as the amount, if any, by which the aggregate of the capital gains of the Trust in the year exceeds the aggregate of the capital losses of the Trust in the year and the amount determined by the Trustees in respect of any net capital losses for prior years which the Trust is permitted by the Income Tax Act to deduct in computing the taxable income of the Trust for the year.

5.3 Distributions of Distributable Cash Flow

- (a) Unitholders shall be entitled to receive non-cumulative distributions if, as and when declared by the Trustee in accordance with the provisions of this Section 5.3.
- (b) The Trustees, on behalf of the Trust, shall, in respect of each Distribution Period, declare payable to holders of record of Preferred Units as of the close of business on the Distribution Record Date for such Distribution Period, an amount equal to the aggregate of (i) the Preferred Unit Base Cash Allocation Amount; and (ii) the amount equal to the product of the Distribution Period Preferred Unit Ratio and the Distribution Period Surplus Cash Allocation Amount. Each Preferred Unitholder's share of the amount of the aggregate distribution as referred to in subparagraphs (i) and (ii) of this subsection 5.3(b), shall be an amount equal to the proportionate share of such distribution amount which is attributable to each Preferred Unit (with such calculation of such proportionate share to be based upon the number of issued and outstanding Preferred Units as at the close of business on the Distribution Record Date for the relevant Distribution Period in question) multiplied by the number of Preferred Units owned of record by the Preferred Unitholder in question on such applicable Distribution Record Date.

- (c) The Trustees, on behalf of the Trust, shall, in respect of each Distribution Period, declare payable to holders of record of Common Units as at the close of business on the Distribution Record Date for such Distribution Period, an amount equal to Distributable Cash Flow less the distributions on the Preferred Units calculated under subsection 5.3(b). Each Common Unitholder's share of the amount of the aggregate distribution as referred to in this subsection 5.3(c) shall be an amount equal to the proportionate share of such distribution amount which is attributable to each Common Unit (with such calculation of such proportionate share to be based upon the number of issued and outstanding Common Units as at the close of business on the Distribution Record Date for the relevant Distribution Period in question) multiplied by the number of Common Units owned of record by the Common Unitholder in question on such applicable Distribution Record Date.

5.4 Other Distributions

- (a) In addition to the distributions which are payable to Unitholders pursuant to Section 5.3, the Trustees may, in their sole discretion, in respect of a Distribution Period, declare a distribution to be payable to holders of Common Units and Preferred Units who are holders of record as at the close of business on the Distribution Record Date for such Distribution Period, out of Income of the Trust, Net Realized Capital Gains, or capital of the Trust or otherwise, in any year, in such amount or amounts, and on such dates as the Trustees may determine, provided that (i) the amount declared payable to the Preferred Unitholders of record as of the close of business on the Distribution Record Date for such Distribution Period shall be equal to the product of the Distribution Period Preferred Unit Ratio and the Distribution Period Additional Distribution Amount, and (ii) the amount declared payable to the Common Unitholders of record as of the close of business on the Distribution Record Date for such Distribution Period shall be an amount equal to the product of the Distribution Period Fund Unit Ratio and the Distribution Period Additional Distribution Amount. Each Unitholder's share of the amount of any such distribution as referred to in subparagraphs (i) or (ii) of this subsection 5.4(a), shall be an amount equal to the proportionate share of such distribution amount which is attributable to each Unit in the class of Units to which such distribution amount relates, multiplied by the number of Units of that particular class owned of record by such Unitholder on such applicable Distribution Record Date.
- (b) Having regard to the present intention of the Trustees to allocate, distribute and make payable to Unitholders all of the Income of the Trust, Net Realized Capital Gains and any other applicable amounts so that the Trust will not have any liability for tax under the Income Tax Act in any year, the Calendar Year Surplus Income Allocation Amount shall, without any further actions on the part of the Trustees, be payable as follows:

- (i) to Preferred Unitholders of record as at the close of business on the last Distribution Record Date in such calendar year in an amount equal to the product of the Distribution Period Preferred Unit Ratio for the last Distribution Period of the calendar year and the Calendar Year Surplus Income Allocation Amount; and
 - (ii) to Common Unitholders of record as at the close of business on the last Distribution Record Date in such calendar year in an amount equal to the product of the Distribution Period Fund Unit Ratio for the last Distribution Period of the calendar year and the Calendar Year Surplus Income Allocation Amount.
- (c) The proportionate share of the amount of any Common Unit distribution made pursuant to either of, or both of, subsections 5.4(a) and 5.4(b) which is attributable to each Common Unit in respect of which such distribution was made shall be determined by dividing the amount of such distribution by the number of issued and outstanding Common Units as determined (i) at the close of business on the applicable Distribution Record Date in respect of a distribution pursuant to subsection 5.4(a), and (ii) at the close of business on the last Distribution Record Date of the year in respect of a distribution pursuant to subsection 5.4(b). Each Common Unitholder's share of the amount of any such distribution shall be an amount equal to the proportionate share of such distribution amount which is attributable to each Common Unit, multiplied by the number of Common Units owned of record by such Common Unitholder on such applicable Distribution Record Date. Subject to Section 5.8, amounts which have been declared to be payable to Common Unitholders pursuant to subsections 5.4(a) and 5.4(b), as the case may be, shall be paid in cash on the Distribution Payment Date which immediately follows the applicable Distribution Record Date in respect of the distribution then being made pursuant to subsection 5.4(a) or subsection 5.4(b).
- (d) The proportionate share of the amount of any Preferred Unit distribution made pursuant to either or both of subsection 5.4(a) and subsection 5.4(b) which is attributable to each Preferred Unit in respect of which such distribution was made shall be determined by dividing the amount of such distribution by the number of issued and outstanding Preferred Units as determined (i) at the close of business on the applicable Distribution Record Date in respect of a distribution pursuant to subsection 5.4(a), and (ii) at the close of business on the last Distribution Record Date of the year in respect to the distribution pursuant to subsection 5.4(b). Each Preferred Unitholder's share of the amount of any such distribution shall be an amount equal to the proportionate share of such distribution amount which is attributable to each Preferred Unit, multiplied by the number of Preferred Units owned of record by such Preferred Unitholder on such applicable Distribution Record Date. Subject to subsection 5.8, amounts which have been declared to be payable to Preferred Unitholders pursuant to subsection 5.4(a) or subsection 5.4(b), as the case may be, shall be paid in cash on the Distribution Payment Date which

immediately follows the applicable Distribution Record Date in respect of the distribution then being made pursuant to subsection 5.4(a) or subsection 5.4(b).

5.5 Character of Distribution

- (a) Distributions or amounts payable to Preferred Unitholders pursuant to this Article 5 shall be deemed to be distributions of Income of the Trust, Net Realized Capital Gains, trust capital or other items in the following amounts:
- (i) in the case of Income of the Trust, in an amount equal to the aggregate of the Preferred Unit Base Income Allocation Amount and the Preferred Unit Additional Income Allocation Amount;
 - (ii) in the case of Net Realized Capital Gains, in an amount equal to the product of the Calendar Year Preferred Unit Ratio and the Net Realized Capital Gains;
 - (iii) in the case of trust capital, in an amount equal to the product of the Calendar Year Preferred Unit Ratio and the trust capital; and
 - (iv) in the case of each other item, in an amount equal to the product of the Calendar Year Preferred Unit Ratio and the amount of the particular other item.
- (b) For greater certainty and notwithstanding anything herein to the contrary, it is the intention hereof that distributions or amounts payable to holders of Preferred Units pursuant to this Article 5 or Schedule E shall be declared by the Trustees to be distributions of Income of the Trust, Net Realized Capital Gains, trust capital or other items, in the same proportions as the distributions on the Ordinary Fund Units for the same Distribution Period are deemed to be distributions of Income of the Fund, Net Realized Capital Gains, trust capital or other items under the terms of the Fund Trust Indenture.
- (c) Distributions or amounts payable to holders of Common Units pursuant to this Article 5, Article 6 or Schedule E shall be deemed to be distributions of Income of the Trust, Net Realized Capital Gains, trust capital or other items, in such amounts as the Trustees shall determine having regard to the obligations of the Trustees in respect of distributions on the Preferred Units, as follows:
- (i) in the case of Income of the Trust, an amount equal to the Fund Unit Additional Income Allocation Amount;
 - (ii) in the case of Net Realized Capital Gains, an amount equal to Net Realized Capital Gains less the amount determined under subsection 5.5(a)(ii);

- (iii) in the case of trust capital, an amount equal to the trust capital for the calendar year less the amount determined under subsection 5.5(a)(iii); and
 - (iv) in the case of each other item, an amount equal to the total amount of the particular item less the amount determined under subsection 5.5(a)(iv) in respect of the particular item.
- (d) For greater certainty, it is hereby declared that any distribution of Net Realized Capital Gains shall include the non-taxable portion of the capital gains of the Trust which are comprised in such distribution.

5.6 Enforceability of Right to Receive Distributions

For greater certainty, it is hereby declared that each Unitholder shall have the legal right to enforce payment of any amount payable to such Unitholder as a result of any distribution or amount which becomes payable to such Unitholder pursuant to this Article 5 or pursuant to the terms of Schedule E.

5.7 Designation of Taxable Capital Gains and Other Amounts

- (a) In accordance with and to the extent permitted by the Income Tax Act, the Trustees in each year shall make designations, in respect of the amounts paid or payable to a holder of a Preferred Unit for such year, in such amounts and proportions as are necessary for such designations to be equal in amount and effect as the designations made in respect of the amounts paid or payable to a holder of a Fund Unit for the same year under the terms of the Fund Trust Indenture, including, without limitation, taxable capital gains realized by the Trust in the year, taxable dividends received by the Trust on shares of taxable Canadian corporations, non-taxable dividends paid on the shares of the capital stock of corporations resident in Canada, and any portion of the Income of the Trust which is from a source in a country other than Canada.
- (b) In accordance with and to the extent permitted by the Income Tax Act and this Indenture, the Trustees in each year shall make designations, in respect of the amounts paid or payable to a holder of a Common Unit for such year, in such amounts that the Trustees consider to be reasonable in all of the circumstances and having regard to the designations required to be made in respect of the Preferred Units, including, without limitation, designations with respect to taxable capital gains realized by the Trust in the year, taxable dividends received by the Trust on shares of taxable Canadian corporations, non-taxable dividends paid on the shares of the capital stock of corporations resident in Canada, and portions of the Income of the Trust which is from a source in a country other than Canada.

5.8 Method of Payment of Distributions

- (a) The Trust shall make payment, in cash, of distributions which have been declared to be payable pursuant to this Article, provided that where the Manager or the Trustees determine that the Trust does not have cash in an amount sufficient to make payment of the full amount of any distribution which has been declared to be payable pursuant to this Article on the due date for such payment, the payment may, at the option of the Trustees, include the issuance of additional Units, or fractions of Units, if necessary, having an aggregate value equal to the difference between the amount of such distribution and the amount of cash which has been determined by the Manager or the Trustees to be available for the payment of such distribution, provided, however, that a Unitholder is entitled to receive only Units of the same class as the class in respect of which such distribution to him was declared.
- (b) The value of each Preferred Unit which is issued pursuant to subsection 5.8(a) for a particular Distribution Period shall be equal to the value of an Ordinary Fund Unit which would be issued pursuant to subsection 5.8 of the Fund Trust Indenture for the relevant Distribution Period. The value of each Common Unit which is issued pursuant to subsection 5.8(a) shall be equal to the Redemption Price (as calculated in accordance with Section 6.6) as though such Unit had been called for redemption by the Trust on the applicable Distribution Record Date.

5.9 Withholding Taxes

The Trustees shall deduct or withhold from distributions otherwise payable to any Unitholder all amounts required by law to be withheld by the Trustees or the Trust from such distributions, and shall remit to the applicable taxation authority, in a timely manner and as required, the amount so deducted or withheld.

5.10 Adjustments in the Event of Fund Distributions Below Threshold Amount

- (a) For Distribution Periods other than Distribution Subordination Periods, and for calendar years other than calendar years in which one or more Distribution Subordination Periods occur, Sections 5.1 to 5.9 and Subsection 2(c) of Schedule E shall govern the distributions on the Preferred Units and the Common Units.
- (b) Notwithstanding the provisions of this Article 5, where, at any time prior to the declaration of a distribution for a Distribution Period, it may reasonably be considered that the Distribution Period may be a Distribution Subordination Period, the Trustees shall establish the distributions for the particular Distribution Period in their sole discretion to give effect to the distribution entitlements of the Fund Units and Units as set forth in the Prospectus in respect of that Distribution Period but otherwise not affect the rights of a holder of a Unit.

- (c) In any calendar year in which one or more Distribution Subordination Periods occur, the Trustees shall: (i) deem distributions or amounts payable to Unitholders out of Income of the Trust, Net Realized Capital Gains, and capital of the Trust or otherwise, in such amounts as the Trustees shall determine, provided that the Income of the Trust, Net Realized Capital Gains, or capital of the Trust or otherwise, shall each be allocated to a Preferred Unit in the same amount or amounts as are allocated to an Ordinary Fund Unit for the calendar year; and (ii) make designations in respect of the amounts paid or payable to a Unitholder in accordance with Section 5.7, provided that the designations in respect of the amounts paid or payable on a Preferred Unit shall be the same in nature and in amounts as the designations in respect of the amount paid or payable on an Ordinary Fund Unit by the Fund in respect of the same period. Nothing in this Section 5.10 shall prevent the Trustees from relying on Section 5.6 and Section 5.9 in respect of any Distribution Subordination Period or any calendar year in which one or more Distribution Subordination Periods occur.
- (d) Notwithstanding Subsections 5.10(b) and 5.10(c), and having regard to the present intention of the Trustees to allocate, distribute and make payable to Unitholders all of the Income of the Trust, Net Realized Capital Gains and any other applicable amounts so that the Trust will not have any liability for tax under the Income Tax Act in any year, the amounts necessary to so achieve that intention shall, without any further actions on the part of the Trustees, be payable to Unitholders of record as at the close of business on the last Distribution Record Date in such calendar year so as to cause each such Unitholder to have the right to enforce payment of an amount reflecting his relative entitlement to Income of the Trust, Net Realized Capital Gains, trust capital and other items having regard to the number of Units held and the entitlements set out in Schedule E hereto. Such amounts shall be paid in accordance with Section 5.8 on the Distribution Payment Date which immediately follows the last Distribution Record Date for the calendar year in question.

ARTICLE 6 REDEMPTION - COMMON UNITS

6.1 Right of Redemption by Common Unitholders

Each Common Unitholder shall be entitled to require the Trust to redeem at any time, or from time to time, at the demand of the Common Unitholder all or any part of the Common Units registered in the name of the Common Unitholder at the price, with respect to each Common Unit so redeemed, as determined and payable in accordance with the terms and conditions hereinafter provided in this Article 6.

6.2 Exercise of Redemption Right by Common Unitholders

- (a) To exercise a Common Unitholder's right to require redemption under this Article 6, a duly completed and properly executed notice requiring the Trust to redeem Common Units, in a form reasonably acceptable to the Trustees, shall be sent to the Trust at the head office of the Trust, together with the Unit Certificate or Unit Certificates representing the Common Units to be redeemed and written instructions as to the number of Common Units to be redeemed. No form or manner of completion or execution of such notice and other documents shall be sufficient unless the same is in all respects satisfactory to the Trustees and is accompanied by any further evidence that the Trustees may reasonably require with respect to the identity, capacity or authority of the person giving such notice.
- (b) Upon the tender of Common Units of a Common Unitholder for redemption, the Common Unitholder shall thereafter cease to have any rights with respect to the Common Units tendered for redemption (including no right to receive distributions in respect of Common Units where such distributions are declared payable to Common Unitholders of record on a date which is on or subsequent to the date upon which the Common Units of the Common Unitholder have been tendered for redemption), other than the right to receive the Redemption Price therefor and the right to receive any distributions thereon which have been declared payable to Common Unitholders of record on a date which is prior to the date upon which the Common Units of the Common Unitholder have been tendered for redemption. Common Units shall be considered to be tendered for redemption on the date the Trust has, to the satisfaction of the Trustees, received the notice, Unit Certificates, the written instructions as to the number of Common Units to be redeemed and other required documents or evidence as aforesaid.

6.3 Right of Redemption by the Trust

The Trust may call for redemption, at any time or from time to time, all or any part of the outstanding Common Units registered in the names of Common Unitholders (other than Common Units registered in the name of the Fund) at a price for each Common Unit so redeemed equal to the Redemption Price, the whole in accordance with the terms and conditions hereinafter provided in this Article 6.

6.4 Exercise of Redemption Right by the Trust

- (a) Before redeeming any Common Units, the Trust shall notify each Common Unitholder, in the manner specified in Section 15.1, of the intention of the Trust to redeem all or part of the Common Units held by such Common Unitholder. Such notice shall be given at least 15 days before the date specified for redemption. Such notice shall set out (i) the Redemption Price (calculated in accordance with Section 6.6), (ii) the date on which the redemption is to take place, and (iii) the number of Common Units to be redeemed if less than all of the Common Units

held by the Common Unitholder to whom such notice is addressed are to be redeemed.

- (b) If less than all of the Common Units held by Common Unitholders, other than the Fund, are to be redeemed, each such Common Unitholder shall have a proportion of the Common Units held by such Common Unitholder redeemed and such proportionate number of Common Units to be redeemed from any such Common Unitholder shall be calculated by multiplying the number of Common Units held by such Common Unitholder by the quotient obtained when dividing the aggregate number of Common Units to be redeemed by the aggregate of all Common Units outstanding (other than Common Units held by the Fund), with any fractional amount being rounded up to the next whole Common Unit.
- (c) Upon delivery of the notice of the Trust calling the Common Units for redemption, the Common Unitholder shall cease to have any rights with respect to the Common Units so called for redemption (other than to receive the Redemption Price therefor and the right to receive any distributions thereon which have been declared payable to the Common Unitholders of record on a date which is prior to the date upon which the redemption of such Common Units is scheduled to take place, as set forth in such notice of redemption delivered by the Trust), including the right to receive any distributions thereon which are declared payable to the Common Unitholders of record on a date which is on or subsequent to the date on which the redemption of such Common Units is scheduled to take place (as set forth in such notice of redemption delivered by the Trust).

6.5 Payment of Redemption Price

The Redemption Price payable in respect of the Common Units tendered or called for redemption shall be paid:

- (a) in the case of Common Units tendered for redemption by a Common Unitholder pursuant to Section 6.1, at the option of the Trustees, (i) in immediately available funds, by cheque, drawn on a Canadian chartered bank or trust company in lawful money of Canada, payable to or to the order of the Common Unitholder whose Common Units are to be redeemed, (ii) by the issuance to or to the order of the Common Unitholder whose Common Units are to be redeemed of such aggregate amount of Series 2 Notes, as is equal to the aggregate Redemption Price payable to such Common Unitholder rounded down to the nearest \$100, with the balance of any such aggregate Redemption Price not paid in Series 2 Notes to be paid in immediately available funds by cheque payable to or to the order of such Common Unitholder, or (iii) by any combination of cash and Series 2 Notes as the Trustees shall determine in their discretion; in each such case payable or issuable on the last day of the calendar month following the calendar month in which the Common Units were so tendered for redemption, provided, however, that a Common Unitholder whose Common Units are to be redeemed may elect, at any time prior

to the payment of the Redemption Price, to receive Series 2 Notes, pursuant to paragraph (ii) above, in the place of all or part of the cash otherwise payable, the amount of such Series 2 Notes payable to be equal to the amount of cash otherwise payable, rounded down to the nearest \$100; and

- (b) in the case of Common Units called for redemption by the Trust pursuant to Section 6.3, in immediately available funds, by cheque, drawn on a Canadian chartered bank or trust company in lawful money of Canada, payable to or to the order of the Common Unitholder whose Common Units are to be redeemed, such payment to be made upon presentation and surrender of the Common Units so called for redemption at the head office of the Trust or at such other place as may be specified in the notice calling such Common Units for redemption.

Payments made by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of a cheque or of Series 2 Notes, or both (as the case may be), in a postage prepaid envelope addressed to the former Common Unitholder and/or any party having a security interest unless such cheque is dishonored upon presentment. Upon such payment, the Trust shall be discharged from all liability to the former Common Unitholder in respect of the Common Units so redeemed to the extent of the amount of such cheque and/or Series 2 Notes.

6.6 Redemption Price

For the purposes hereof, the price per Common Unit payable to a Common Unitholder for each Common Unit tendered for redemption by such Common Unitholder or called for redemption by the Trust (hereinafter called the “**Redemption Price**”) shall be an amount equal to the amount determined in accordance with the following formula:

$$\frac{(A \times B) - C}{D}$$

where:

- A = the Fund Cash Redemption Price calculated as of the close of business on the date the Common Units were so tendered for redemption by the Common Unitholder pursuant to Section 6.2 or the date the Trustees approved the redemption of Common Units pursuant to Section 6.3, as the case may be;
- B = the aggregate number of Fund Units outstanding as of the close of business on the date the Common Units were so tendered for redemption by the Common Unitholder pursuant to Section 6.2 or the date the Trustees approved the redemption of Common Units pursuant to Section 6.3, as the case may be;
- C = the aggregate unpaid principal amount of the Notes owned by the Fund, together with all accrued interest thereon, any other indebtedness of, or liabilities owed by, the Trust to

the Fund, and the fair market value of all other assets or investments owned by the Fund (other than Units and Notes), as of the close of business on the date the Common Units were so tendered for redemption by the Common Unitholder pursuant to Section 6.2 or the date the Trustees approved the redemption of Common Units pursuant to Section 6.3, as the case may be; and

D = the aggregate number of Common Units outstanding as of the close of business on the date the Common Units were so tendered for redemption by the Common Unitholder pursuant to Section 6.2 or the date the Trustees approved the redemption of Common Units pursuant to Section 6.3, as the case may be.

6.7 Cancellation of Certificates for all Redeemed Units

All Unit Certificates representing Common Units which are redeemed under this Article 6 shall be cancelled and such Common Units shall no longer be outstanding.

6.8 Enforceability of Right to Amounts Payable

For greater certainty, it is hereby declared that each Unitholder shall have the legal right to enforce payment of any amount payable to such Unitholder as a result of any distribution or amount which becomes payable to such Unitholder pursuant to this Article 6.

ARTICLE 7 TRUSTEES, OFFICERS AND MEETINGS OF TRUSTEES

7.1 Number and Term

- (a) The Trust shall have not less than five and not more than fifteen Trustees, provided that from the date hereof to Closing the Trust may have a minimum of one Trustee. The number of Trustees shall be determined from time to time by resolution of the Trustees. From and after the Closing the number of Trustees shall be fixed at seven (7) until such time as the Trustees pass a resolution to fix the number of Trustees at a new number.
- (b) Following the passage of a resolution by the Trustees fixing the number of Trustees at a greater number (not to exceed fifteen) than was fixed immediately prior to the passage of such resolution, (i) the Manager shall appoint the requisite number of Manager Trustees to partially fill the vacancies created by the increase in number of Trustees so that the aggregate number of Manger Trustees equates to the number of Manager Trustees which are permitted pursuant to Section 7.3 below, and (ii) the then current Independent Trustees shall appoint the requisite number of additional Independent Trustees to partially fill the vacancies created by the increase in number of Trustees so that the aggregate number of Independent Trustees equates

to the number of Independent Trustees which are permitted pursuant to Section 7.3 below.

- (c) Notwithstanding any other provision herein contained, it is hereby acknowledged and confirmed that the Initial Trustee was appointed as a Trustee effective December 22, 2002 pursuant to the terms of the Original Indenture. The term of office of each other Trustee commences from the date on which his election or appointment becomes effective in accordance with Section 7.4. The term of office of any Trustee continues until the annual meeting of Unitholders next following his election or appointment or (if an election or appointment of Trustees is not held at such meeting or if such meeting does not occur) until the date on which his successor is elected or appointed, or earlier if he dies or resigns or is removed or disqualified, or until his term of office is terminated for any other reason in accordance with this Trust Indenture.

7.2 Qualifications of Trustees

A Trustee shall be an individual. The following persons are disqualified from being a Trustee of the Trust:

- (a) anyone who is less than 18 years of age;
- (b) anyone who does not have the full exercise of his civil rights;
- (c) anyone who is of unsound mind and has been so found by a court in Canada or elsewhere;
- (d) anyone who has been placed under protective supervision; and
- (e) anyone who has the status of bankrupt.

A majority of Trustees must be residents of Canada within the meaning of the Income Tax Act.

7.3 Composition of Trustees

- (a) From and after Closing, and as long as the Fund is an owner of any of the Units, the number of Independent Trustees shall equal, in the case where the total number of Trustees is an even number, one half of that total number plus one and, in all other cases, one half of that total number rounded up to the nearest whole number.
- (b) Notwithstanding anything herein contained, as long as the Fund is a reporting issuer (or equivalent) in any jurisdiction in Canada, at least three of the Trustees must be Independent Trustees.

- (c) During the term of the Management Agreement (including during any renewal term thereof) the Manager:
- (i) shall be entitled to appoint a number of Manager Trustees which shall equal, in the case where the total number of Trustees is an even number, one half of that total number less one and, in all other cases, one half of that total number rounded down to the nearest whole number, each of whom shall, immediately after being named by the Manager in a notice to the Trust and upon complying with Section 7.4 hereof, become a Trustee hereunder and shall be deemed to be a party (as a Trustee) to this Trust Indenture;
 - (ii) shall, subject to compliance with the restriction contained in subsection 7.3(c)(iii) below, be entitled to propose (a “**Manager Trustee Proposal**”) in the proxy-related materials, if any, sent to Common Unitholders and to holders of Fund Units with respect to the respective meetings of unitholders of the Trust and the Fund, the nominees for election as Independent Trustees. The inclusion of such Manager Trustee Proposal shall be in lieu of any Trustee or management solicitation proposals in connection with the voting of Common Units and Fund Units (as the case may be) in connection with the election of the Independent Trustees; and
 - (iii) shall, as a condition precedent to the inclusion of any Manager Trustee Proposal in the proxy-related materials, if any, sent to Common Unitholders and holders of Fund Units as contemplated in subsection 7.3(c)(ii) above, first obtain approval of the Independent Trustees then in office to the inclusion, in the Manager Trustee Proposal, of the names of each of the Manager’s proposed nominees for election as Independent Trustees.

7.4 Election or Appointment of Trustees

- (a) The election of the Independent Trustees shall be by Ordinary Resolution, provided that no Ordinary Resolution shall be required to elect any of the initial Independent Trustees as long as such initial Independent Trustees are those individuals who have been named in the Prospectus to be Independent Trustees and upon delivery of an acceptance to act as a trustee (substantially in the form set forth in subsection 7.4(b) below) by such an individual, that individual shall be deemed to be properly appointed or elected hereunder as a trustee of this Trust and shall be deemed to be a party (as a Trustee) to this Trust Indenture. The appointment of the Manager Trustees shall be by notice provided to the Trust by the Manager.
- (b) The election or appointment of any Trustee (other than an individual who is serving as a Trustee immediately prior to such election or appointment and other than the Initial Trustee with respect to his appointment as Trustee upon the execution of the Original Indenture) shall not become effective unless and until such person has,

either before or after such election or appointment, executed and delivered to the Trust an acceptance substantially as follows:

To: Enbridge Commercial Trust (the “Trust”)

And to: The Trustees of the Trust

The undersigned hereby accepts his or her election or appointment as a trustee of the Trust and hereby acknowledges and agrees that, upon the later of the date of this acceptance and the date of the undersigned’s election or appointment as a trustee of the Trust, the undersigned shall become and will be deemed to be a party, as a trustee, to the Amended and Restated Trust Indenture made as of May 1, 2006, as the same may be amended from time to time, governing the Trust (the “Trust Indenture”), and the undersigned further agrees to act as a trustee of the Trust pursuant to and in accordance with the terms of the Trust Indenture.

The undersigned hereby certifies that he or she is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada), and agrees to advise the Trust forthwith upon his or her becoming a non-resident of Canada. [OR, IF A NON-RESIDENT: The undersigned hereby certifies that he or she is a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).]

The undersigned hereby further certifies that he or she is not disqualified from being a trustee of the Trust for any of the reasons set forth in Section 7.2 of the Trust Indenture.

Dated: _____, _____

[Print Name]

[Signature]

- (c) Upon the later of a person being elected or appointed as a Trustee hereunder and executing and delivering to the Trust an acceptance substantially as set forth in Subsection 7.4(b) above, such person shall become a Trustee hereunder and shall be deemed to be a party (as a Trustee) to this Trust Indenture.
- (d) An act of a Trustee is valid notwithstanding an irregularity in the election or appointment of the Trustee or a defect in the qualifications of the Trustee.

7.5 Resignation, Removal and Death of Trustees

- (a) A Trustee may resign at any time by an instrument in writing signed by him and delivered to the other Trustees in accordance with Section 15.2. Such resignation

shall take effect on the date such notice is deemed to have been given under Section 15.2 or at any later time specified in the notice.

- (b) An Independent Trustee may be removed at any time with or without cause by Ordinary Resolution. Any removal of any such Trustee shall take effect immediately following the passage of the Ordinary Resolution and any Independent Trustee so removed shall be so notified by the Manager or any officer of the Trust forthwith following such removal. The Manager alone shall have the right to remove a Manager Trustee from office, and such removal shall be effected by, and become immediately effective upon, the Manager providing notice to the Trust of the removal of such Manager Trustee.
- (c) The term of office of a Trustee shall terminate and a vacancy shall occur (i) in the event of the death of the Trustee, (ii) upon an incapacity of the Trustee which has or will prevent him from exercising the duties of the office of a Trustee for a period of at least 120 days or (iii) if he no longer satisfies all of the requirements of subsections 7.2(a) to (e).
- (d) Upon the resignation or removal of any Trustee, or his otherwise ceasing to be a Trustee, he shall:
 - (i) cease to have rights, privileges, powers and authorities of a Trustee hereunder;
 - (ii) execute and deliver such documents as the remaining Trustees shall reasonably require for the conveyance of any Trust Property held in his name;
 - (iii) account to the remaining Trustees as they may require for all property which he holds as Trustee; and
 - (iv) resign from all representative or other positions held by him on behalf of the Trust.
- (e) Upon the death or incapacity of any Trustee, his legal representative shall execute and deliver on his behalf such documents as the remaining Trustees may require as provided in this Section 7.5.
- (f) Upon a Trustee ceasing to hold office as such hereunder, such Trustee shall cease to be a party (as a Trustee) to this Trust Indenture; provided, however, that such Trustee shall continue to be entitled to (i) payment of any amounts owing by the Trust to the Trustee which accrued prior to such Trustee vacating office as a trustee of the Trust, and (ii) the benefit of the indemnity provided in Section 12.2 for all matters occurring prior to such Trustee vacating office as a trustee of the Trust.

- (g) The resignation or removal of a Trustee, or a Trustee otherwise ceasing to hold office as such hereunder, shall not affect any liabilities of such Trustee in respect of or in any way arising under or out of the Trust Indenture which have accrued prior to such resignation, removal or cessation.

7.6 Vacancies

No vacancy of the office of a Trustee shall operate to annul this Trust Indenture or affect the continuity of the Trust. Until vacancies are filled, the remaining Trustee or Trustees (even if less than the minimum number needed under this Trust Indenture for the Trustees to act, less than a quorum, or less than the number of Independent Trustees required hereunder) may exercise the powers of the Trustees hereunder. In case of a vacancy of the office of an Independent Trustee, either the Unitholders by Ordinary Resolution, or a majority of the Trustees continuing in office, shall forthwith fill such vacancy provided that the person appointed or elected to fill the vacancy shall qualify as an Independent Trustee. In case of vacancy of the office of a Manager Trustee, the Manager alone has the right to fill such vacancy. Any Trustee who has filled a vacancy by election by the Unitholders, appointment by the Trustees or appointment by the Manager, as applicable, shall hold office for the remaining term of the Trustee whom he has succeeded.

If there shall be no Trustees, the Manager shall promptly call a meeting of Unitholders for the election of successor Trustees, failing which any interested person (including a Unitholder) may apply to a court of competent jurisdiction to appoint replacement Trustees.

7.7 Successor and Additional Trustees

The rights of the Trustees, subject to the terms hereof, to control and exclusively administer the Trust and to have the legal title to the Trust Property drawn up in their names, and all other rights of the Trustees at law, shall vest automatically in all persons who may hereafter become Trustees upon their due election or appointment and qualification, in accordance with the terms hereof, without any further act and they shall thereupon have all the rights, privileges, powers, authorities, obligations and immunities of Trustees hereunder. Such rights shall vest in the Trustees whether or not conveyancing or transfer documents have been executed and delivered pursuant to Section 7.5 or otherwise.

7.8 Compensation and Other Remuneration

Independent Trustees shall be entitled to receive for their services as Trustees such reasonable compensation as the Trustees may determine from time to time, as well as reimbursement of their out-of-pocket expenses incurred in acting as a Trustee. Manager Trustees shall not be entitled to receive any remuneration for their services as Trustees, but shall be entitled to reimbursement from the Trust of their out-of-pocket expenses incurred in acting as Trustees.

7.9 Officers of the Trust

The Trust may (but need not) have a Chairman, a President, Chief Executive Officer, Chief Financial Officer, one or more Executive Vice-Presidents, one or more Senior Vice-Presidents, one or more Vice-Presidents and a Secretary and such other officers as the Trustees may appoint from time to time. Such officers shall have such powers, including such powers to bind the Trust, as the Trustees may determine from time to time, whether in any Trustees' Regulations or otherwise. One person may hold two or more offices. Any officer of the Trust may, but need not, be a Trustee. The Chairman, if not a Trustee, shall be entitled to receive notice of and attend all meetings of the Trustees but, unless he is a Trustee, the Chairman shall not be entitled to vote at any such meeting. Officers of the Trust shall be appointed and discharged and their remuneration determined by the Trustees.

7.10 Committees

Trustees may appoint from their number a committee of Trustees for any purpose the Trustees deem advisable from time to time, and may delegate to such committee any, but not all, of the powers of the Trustees. A committee shall limit its activities to the purpose or purposes for which it is formed, and shall have no powers except those specifically conferred on it by the Trustees. Unless otherwise provided by the Trustees in connection with the establishment of the committee and delegation of powers thereto, and provided such committee is acting within the authority and powers delegated to it, resolutions duly passed by a committee shall be operative and effective as though passed at a meeting of all Trustees.

The Trustees shall appoint an audit committee of at least three Trustees from among their number, all of whom shall be Independent Trustees.

7.11 Trustees May Act Without Meeting

Any action of the Trustees may be taken at a meeting by vote or without a meeting by written consent or resolution signed by all the Trustees entitled to vote in respect of the matters brought before the Trustees for approval. Any such consent or resolution may be signed in counterpart. Execution and delivery of a counterpart of a written consent or resolution may be effected by facsimile transmission. Any Trustee who executes and delivers a counterpart of a written consent or resolution by facsimile transmission shall thereafter forthwith deliver, to the Trust, an original counterpart execution page with its original execution located thereon; provided, however, that any failure by a Trustee to so deliver such original signature page shall not affect the validity or enforceability of the written consent or resolution, as the case may be.

7.12 Notice of Meeting

Meetings of the Trustees may be held from time to time upon the giving of notice by the Manager or any two Trustees. Regular meetings of the Trustees may be held without notice at a time and place fixed by the Trustees. Notice of the time and place of any meeting, other than a regular pre-scheduled meeting, shall be given to each Trustee not less than 48 hours before the meeting but may be waived in writing by a Trustee either before or after such meeting. The attendance of a Trustee at a meeting shall constitute a waiver of notice of such meeting except where a Trustee attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

7.13 Quorum

A quorum for all meetings of the Trustees or any committee thereof shall be at least a majority of the Trustees then in office or being members of such committee, as the case may be, present in person, provided, however, that a quorum for any meeting at which discussion or voting will take place with respect to any matter referred to in, or which attracts the application of, Section 8.7 shall also require at least a majority of the Independent Trustees then appointed to be present in person.

7.14 Voting at Meetings

Questions arising at any meeting of the Trustees shall be decided by a majority of the votes cast. In the case of an equality of votes, the chairman of the meeting, who shall be the Chairman if present, shall not have a second or casting vote in addition to his original vote, if any.

With respect to any decisions required or discretion to be exercised by the Trustees or the Independent Trustees (as the case may be), in connection with the Trust or the Fund, including pursuant to Section 8.9 hereof and Section 8.7 of the Fund Trust Indenture, the Trustees shall make such decisions and exercise such discretion acting reasonably and in good faith.

7.15 Meeting by Telephone

Any Trustees may participate in a meeting of the Trustees or any committee thereof by means of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and a Trustee so participating shall be considered for the purposes of this Trust Indenture to be present in person at that meeting.

ARTICLE 8
TRUSTEES' POWERS AND DUTIES

8.1 General Powers

The Trustees, subject only to the specific limitations contained in this Trust Indenture, shall have, without further or other action or consent, and free from any power of control on the part of the Unitholders, full, absolute and exclusive power, control and authority over the Trust Property and over the affairs of the Trust to the same extent as if the Trustees were the sole and absolute beneficial owners of such property in their own right, to do all such acts and things as in their sole judgement and discretion are necessary or incidental to, or desirable for, carrying out the trust created hereunder. In construing the provisions of this Trust Indenture, presumption shall be in favour of the granted powers and authority to the Trustees. The enumeration of any specific power or authority herein (including pursuant to Section 8.2) shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustees.

To the maximum extent permitted by law the Trustees shall, in carrying out investment activities, not be in any way restricted by the provisions of the laws of any jurisdiction limiting or purporting to limit investments which may be made by trustees.

8.2 Specific Powers and Authorities

Subject to Section 8.9 and to any other express limitations contained in this Trust Indenture, and in addition to any powers and authorities conferred by this Trust Indenture, or which the Trustees may have by virtue of any present or future law, or which may be authorized by Ordinary Resolution or Special Resolution from time to time, the Trustees without any action or consent by the Unitholders shall have and may exercise at any time and from time to time the following powers and authorities which may be exercised by them in their sole judgement and discretion and in such manner and upon such terms and conditions as they may from time to time deem proper:

- (a) to carry on the Business, including, without limitation, owning, operating, leasing or otherwise investing directly or indirectly in energy infrastructure assets and any other assets or interests constituting or relating to the Business;
- (b) to make, hold, acquire, dispose of and otherwise hold and manage investments and other direct or indirect rights in companies or other entities engaged in the Business;
- (c) to acquire by purchase or otherwise and to obtain, accept and use all permits, licenses, approvals, consents, certificates and franchises, whether municipal, provincial, federal, state, international or otherwise, as necessary or useful to carry out the purposes of this Trust, and to enter into such contracts and make such

arrangements as deemed necessary or useful to carry out and fulfil such permits, licenses, approvals, consents, certificates and franchises;

- (d) to carry out any and all basic and detailed engineering, design, research and development necessary or useful to construct, build, acquire, equip, maintain, develop, manage, operate, control, repair, modify, expand, hold and use all plants, machinery, equipment, buildings, infrastructure and all other property and assets necessary or useful to carry out the purposes of the Trust;
- (e) to acquire, own, import, lease, hold and use all assets and property (including dismemberments thereof) necessary or useful to carry out the purposes of the Trust, including:
 - (i) immoveables and real property and rights and interests in immoveables and real property, including land, river beds and dismemberments of immovable rights; and
 - (ii) moveables and personal property and rights and interests in moveables and personal property, including hydraulic power, machinery, equipment, office equipment, furniture, fixtures, vehicles, spare parts, materials, supplies, finished products, work-in-progress, raw materials, operating supplies, shipping and packaging supplies, maintenance items, marketing materials, chemicals, ingredients and goods of any kind whatsoever;
- (f) to sell, export, dismember, exchange, create an encumbrance on, improve, manage, develop, lease, license, deal with, and otherwise alienate any assets or property of the Trust, including, without limitation, energy infrastructure assets;
- (g) to apply for, acquire, hold, use, exercise, develop, lease, license, sell, register and otherwise deal with all intellectual property necessary or useful to carry out the purposes of the Trust;
- (h) to obtain or render services for or on behalf of the Trust necessary or useful to carry out the purposes of the Trust;
- (i) to determine, among other things, the amount of Distributable Cash Flow, Income of the Trust and Net Realized Capital Gains for the purposes of distributions hereunder and to arrange for distributions to Unitholders pursuant to Article 5 and for redemptions of Units pursuant to Article 6;
- (j) to pay, out of the Trust Property, all reasonable fees, costs and expenses incurred, from time to time, in the management and administration of the Trust, including pursuant to the Management Agreement;
- (k) to obtain, prepare, compose, design, print, publish, issue and distribute marketing and public relations materials in connection with the Trust;

- (l) to open, operate and close accounts and other similar credit, deposit and banking arrangements and to negotiate and sign banking and financing contracts and agreements;
- (m) to borrow money and request the issuance of letters of credit upon the credit of the Trust and the Trust Property;
- (n) to temporarily hold cash and other short term investments in connection with and for the purposes of the Trust's activities, including paying management, administration and other expenses of the Trust, paying any amounts required in connection with the redemption of Units, and making distributions to Unitholders;
- (o) to issue, reissue, sell or pledge debt obligations of the Trust and to make, accept, endorse, negotiate or otherwise deal with bonds, debentures, cheques, drafts, notes, orders for the payment of money, bills of exchange, bills of lading, acceptances and other similar instruments and obligations as may be necessary or useful to carry out the purposes of the Trust;
- (p) to give a guarantee on behalf of the Trust to secure performance of an obligation of another person;
- (q) to mortgage, hypothecate, pledge or otherwise create a security interest in all or any movable or immovable, personal or real or other property of the Trust, owned or subsequently acquired, to secure any obligation of the Trust;
- (r) to obtain security, including encumbrances on assets, to secure the full payment of money owed to the Trust and the performance of obligations in favour of the Trust, and to exercise all of the rights of the Trust, and to perform all of the obligations of the Trust, under such security;
- (s) to renew or extend or participate in the renewal or extension of any security, upon such terms as may be deemed advisable, and to agree to an increase or reduction in the rate of interest (or to agree to a waiver of interest) on any security or to any other modification or change in the terms of any security or of any guarantee pertaining thereto, in any manner and to any extent that it may deem advisable; and to waive any default whether in performance of any covenant or condition of any security, or in the performance of any guarantee or to enforce the rights in respect of any such default in such manner and to such extent that it may deem advisable;
- (t) to exercise and enforce any and all rights of foreclosure, to bid on property on sale or foreclosure, to take a conveyance in lieu of foreclosure with or without paying a consideration therefor and in connection therewith to revive the obligation on the covenants secured by such security and to exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies with respect to any such security or guarantee;

- (u) to establish places of business of the Trust;
- (v) to manage the Trust Property;
- (w) to invest, hold shares, trust units, beneficial interests, partnership interests, joint venture interests or other interests in any person necessary or useful to carry out the purposes of the Trust, including, for greater certainty, the power and authority to cause the Trust to invest, directly or indirectly, in one or more partnerships (whether limited or general) as a partner thereof;
- (x) to cause legal title to any of the Trust Property to be held in the name of one or more of the Trustees or to be drawn up in the name of one or more of the Trustees or, to the extent permitted by applicable law, in the name of the Trust;
- (y) to determine conclusively the allocation to capital, income or other appropriate accounts of all receipts, expenses and disbursements of the Trust;
- (z) to enter into any agreement or instrument to create or provide for the issue of Units, and to cause such Units to be issued for such consideration (in cash or property in kind) as the Trustees, in their sole discretion, may deem appropriate;
- (aa) to enter into any agreement or instrument to create or provide for the issue of the Notes or other evidence of indebtedness of the Trust, and to cause the Notes or other evidence of indebtedness to be issued for such consideration (in cash or property in kind) as the Trustees, in their sole discretion, may deem appropriate;
- (bb) to enter into any agreement or instrument (including any warrant agreement or other similar document) to create or provide for the issue of securities convertible into or exchangeable for any Units or other securities of the Trust, or warrants, options or other rights to acquire any Units or other securities of the Trust, and such agreements or instruments may provide for any matter determined by the Trustees to be necessary or useful including provisions pertaining to securities certificates (form, manner of execution, and certification), maintenance of registers, use of book-based versus certificated system, repurchases, redemptions and transfers;
- (cc) to determine conclusively the value of any or all of the Trust Property from time to time and, in determining such value, to consider such information and advice as the Trustees, in their sole judgement, may deem material and reliable;
- (dd) where reasonably required, to engage or employ on behalf of the Trust any persons as managers, administrators, agents, advisors, representatives, officers, employees, operators, independent contractors or subcontractors (including, without limitation, the Manager, investment advisors, registrars, underwriters, accountants, lawyers, appraisers, brokers or otherwise) in one or more capacities;

- (ee) to the extent not prohibited by law, to delegate, including to the Manager pursuant to Article 13, any of the powers and duties of the Trustees to any one or more agents, representatives, officers, employees, independent contractors, subcontractors or other persons without liability to the Trustees, except as provided in this Trust Indenture;
- (ff) to appear and respond to all orders issued by a court, arbitral body or administrative authority or claims made by another person, to make all affidavits, sworn declarations and solemn affirmations with respect to such matters, to put in default, sue for and receive all sums of money or obligations due to the Trust, and to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, disputes, claims, demands or other litigation or proceedings, regulatory or judicial, relating to the Trust, the Trust Property or the Trust's affairs, to enter into agreements therefor, whether or not any suit or proceeding is commenced or claim asserted and to enter into agreements regarding the arbitration, adjudication or settlement thereof;
- (gg) to arrange for insurance contracts and policies insuring the Trust, its property, and/or any or all of the Trustees or the Unitholders, including against any and all claims and liabilities of any nature asserted by any person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees or Unitholders or otherwise, and to perform all of the obligations of the Trust under such insurance policies and contracts, the whole to the extent permitted by law;
- (hh) to do all such things and take all such action, and to negotiate, make, execute, acknowledge and deliver any and all deeds, instruments, contracts, waivers, releases or other documents necessary or useful for the exercise or accomplishment of: (i) any of the powers herein granted to the Trustees (ii) the purposes of the Trust as set forth in Section 4.1, and (iii) all of the rights and obligations of the Trustees hereunder; including, without limitation, the negotiation and execution of a note indenture with respect to the Notes and credit agreements with lenders and agreements in connection with future offerings of securities and the issuance of Units;
- (ii) to use their best efforts to ensure that the Trust complies at all times with the requirements of paragraph 108(2)(a) of the Income Tax Act;
- (jj) to postpone and subordinate, in right of payment, all present and future indebtedness, liabilities and obligations of a person owed to the Trust to payment in full of all present and future indebtedness, liabilities and obligations of such person to lenders and other creditors of such person, and to enter into any agreement or instrument to create or provide for such postponement and subordination in favour of such lenders and creditors;

- (kk) to indemnify, out of the Trust Property, any person against any and all liabilities, claims, actions, causes of action, judgments, orders, damages (including foreseeable consequential damages), costs, expenses, fines, penalties and losses (including sums paid by such person in settlement of claims and all reasonable consultant, expert and legal fees and expenses) or any resulting damages, harm or injuries to such person or property of any third parties arising from the business of the Trust;
- (ll) to provide or cause to be provided to any bank, creditor, financial institution or any other person such guarantees, indemnities, postponements and subordinations, acknowledgements, assurances or other credit support, in any form whatsoever, as the Trustees, in their sole discretion, deem necessary, useful or desirable in connection with the establishment or arrangement of any and all debt or equity financings of affiliates and associates of the Trust, including any extensions, renewals, refinancings or replacements thereof, and to enter into any agreement, indenture, instrument or other document on such terms and conditions as the Trustees, in their sole discretion, may deem appropriate in the circumstances in connection with such financings; and
- (mm) to do all such other acts and things as are necessary, useful, incidental or ancillary to the foregoing and to exercise all powers and authorities which are necessary, useful, incidental or ancillary to carry on the affairs of the Trust, to promote the purposes for which the Trust is formed and to carry out the provisions of this Trust Indenture.

8.3 Further Powers of the Trustees

The Trustees shall have the power to prescribe any form of document or other instrument provided for or contemplated by this Trust Indenture. The Trustees may make, adopt, amend, or repeal regulations containing provisions relating to the conduct of the affairs of the Trust not inconsistent with law or with this Trust Indenture (the “**Trustees’ Regulations**”). The Trustees shall also be entitled to make any reasonable decisions, designations or determinations not contrary to this Trust Indenture which they may determine are necessary or desirable in interpreting, applying or administering this Trust Indenture or in administering, managing or operating the Trust. Any Trustees’ Regulations, decisions, designations or determinations made pursuant to this Section 8.3 shall be conclusive and binding upon all persons affected thereby. The Trustees shall also have such additional powers as may be approved by the Unitholders by Ordinary Resolution.

8.4 Standard of Care

The standard of care required of the Trustees in exercising their powers and carrying out their functions hereunder shall be that they exercise their powers and carry out their functions hereunder as Trustees honestly, in good faith with a view to the best

interests of the Trust and the Unitholders and that in connection therewith they exercise that degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Unless otherwise required by law, no Trustee shall be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustees in their capacity as Trustees shall not be required to devote their entire time to the affairs of the Trust.

8.5 Reliance Upon Trustees

Any person dealing with the Trust in respect of any matters pertaining to the Trust, the Trust Property or securities of the Trust shall be entitled to rely on a certificate or statutory declaration (including, without limitation, a certificate or statutory declaration as to the passing of a resolution of the Trustees) executed by any two Trustees or the Secretary (alone) or, without limitation, such other person as may be authorized by the Trustees, as to the capacity, power and authority of the Trustees, to act for and on behalf and in the name of the Trust. No person dealing with the Trustees shall be bound to see to the application of any money or property passing into the hands or control of the Trustees. The receipt by or on behalf of the Trustees of money or other consideration shall constitute receipt by the Trust and be binding thereon.

8.6 Determinations of Trustees Binding

All determinations of the Trustees and any agent to whom the Trustees have delegated duties hereunder (including the Manager), where such determinations are made in good faith with respect to any matters relating to the Trust, including, without limitation, whether any particular investment or disposition meets the requirements of this Trust Indenture, shall be final and conclusive and shall be binding upon the Trust and all Unitholders (and, where the Unitholder is a “registered retirement savings plan”, “registered retirement income fund”, “registered education savings plan”, “deferred profit sharing plan” or “registered pension fund” or “registered pension plan” (all within the meaning of the Income Tax Act), or such other fund or plan registered under the Income Tax Act, upon past, present or future fund or plan beneficiaries and fund or plan holders) and Units shall be issued and sold on the condition and understanding that any and all such determinations shall be final, conclusive and binding as aforesaid.

8.7 Conflict of Interest

Except in respect of any agreement entered into by either the Fund or the Trust or any of their respective affiliates on or prior to the Date of Closing, if a Trustee or an officer of the Trust is (i) a party to a contract or transaction or proposed contract or transaction with the Fund or the Trust or any of their respective affiliates or (ii) a trustee, director or officer of, or otherwise has a material interest in, any person or affiliate of any person who is a party to a contract or transaction or proposed contract or transaction with the Fund or the Trust or any of their respective affiliates, then the Trustee or the officer of the Trust, as the case may be, shall disclose in writing to the Trustees or request to have entered in the

minutes of a meeting of the Trustees, the nature and extent of such interest as set forth in this Section 8.7.

- (a) The disclosure required in the case of a Trustee shall be made:
 - (i) at the meeting of Trustees at which the contract or transaction or proposed contract or transaction is first considered;
 - (ii) if the Trustee was not then interested in the contract or transaction or proposed contract or transaction, at the first such meeting after he becomes so interested;
 - (iii) if the Trustee becomes interested after the contract is made or the transaction is entered into, at the first meeting after he becomes so interested; or
 - (iv) if a person who is interested in the contract or transaction or proposed contract or transaction later becomes a Trustee, at the first such meeting after he becomes a Trustee.

- (b) The disclosure required in the case of an officer of the Trust who is not a Trustee shall be made:
 - (i) forthwith after such person becomes aware that the contract or transaction or proposed contract or transaction is to be considered or has been considered at a meeting of the Trustees;
 - (ii) if such person becomes interested after the contract is made or the transaction is entered into, forthwith after such person becomes so interested; or
 - (iii) if a person who is interested in the contract or transaction, or proposed contract or transaction, later becomes an officer of the Trust but is not a Trustee, forthwith after he becomes an officer of the Trust.

- (c) Where this Section 8.7 applies to any person in respect of a contract or transaction or proposed contract or transaction that, in the ordinary course of the affairs of the Fund, the Trust or any of their affiliates, would not require approval by the Trustees or the Unitholders, such person shall disclose in writing to the Trustees or request to have entered into the minutes of a meeting of the Trustees, the nature and extent of such person's interest forthwith after such person becomes aware of the contract or transaction or proposed contract or transaction.

- (d) A Trustee referred to in this Section 8.7 shall not vote on any resolution to approve such contract or transaction or proposed contract or transaction except in the circumstances set forth in subsection 8.7(e) or unless the contract or transaction is:

- (i) one relating primarily to his remuneration as a Trustee, officer, employee or agent of the Trust;
- (ii) one for indemnity under Section 12.2 or the purchase of liability insurance; or
- (iii) one with an affiliate of the Trust;

provided, however, that the presence of such Trustee at the relevant meeting, or the written recognition by such Trustee of any resolution in writing, shall be counted towards any quorum requirement or requirement that at least a minimum number of Trustees act.

- (e) Where a Manager Trustee has disclosed his interest in a contract or transaction or proposed contract or transaction, in accordance with this Section 8.7, the Independent Trustees shall forthwith make a determination (by majority vote) as to whether or not the nature of the interest of the Manager Trustee is such that such Manager Trustee ought to be prohibited from voting on any resolution to approve such contract or transaction or proposed contract or transaction, and where the Independent Trustees make such a determination such Manager Trustee shall not be permitted to vote. The determination of the Independent Trustees in this respect is final and binding and the Independent Trustees shall have no liability to Unitholders, annuitants or any other person whomsoever in respect of such decision or the fact that the contract or transaction or proposed contract or transaction is, regardless of whether such Manager Trustee is entitled to vote in respect thereof, either approved or not approved (as the case may be).
- (f) For the purposes hereof, a general notice to the Trustees by a Trustee or an officer of the Trust disclosing that he is a director or officer of, or has a material interest in, a person and is to be regarded as interested in any contract made or any transaction entered into or any proposed contract or transaction with that person, is a sufficient disclosure of interest in relation to any contract so made or transaction so entered into or any proposed contract or transaction; provided that, notwithstanding the foregoing, for the purposes hereof, the election of an individual as a Manager Trustee is deemed to be sufficient disclosure of the fact that such Manager Trustee is to be regarded as interested in relation to any contract made or any transaction entered into, or in relation to any proposed contract or proposed transaction, with Enbridge Inc. or any of its affiliates.
- (g) Where a contract is made or a transaction is entered into between (A) the Fund or the Trust or any affiliate of either of them and a Trustee or an officer of the Trust, or between (B) the Fund or the Trust or any affiliate of either of them and another person or affiliate of another person of which a Trustee or an officer of the Trust is a trustee, director or officer or in which he has a material interest:

(i) such Trustee or an officer of the Trust (as the case may be) is not accountable to the Trust or to the Unitholders for any profit or gain realized from the contract or transaction; and

(ii) the contract or transaction is neither void nor voidable,

by reason only of that relationship or by reason only that such person is present at or is counted to determine the presence of a quorum at the meeting of the Trustees that authorized the contract or transaction, if such Trustee or an officer of the Trust (as the case may be) disclosed his interest in accordance with this Section 8.7 and the contract or transaction was approved by the Trustees or the Unitholders.

(h) Where a Trustee or an officer of the Trust fails to disclose his interest in a contract or transaction or proposed contract or transaction in accordance with this Trust Indenture, or otherwise fails to comply with this Section 8.7, the Trustees or any Unitholder, in addition to any other rights or remedies in connection with such failure exercisable at law, may apply to a court for an order setting aside the contract or transaction and/or directing that such person account to the Trust for any profit or gain realized.

(i) Notwithstanding anything in this section, a Trustee or an officer of the Trust, who has acted honestly and in good faith, is not accountable to the Trust or to Unitholders or any annuitant for any profit or gain realized from a contract or transaction requiring disclosure under this Section 8.7, and the contract or transaction, if it was reasonable and fair to the Fund, the Trust or their respective affiliates (as the case may be) at the time it was approved, is not void or voidable by reason only of the interest therein of the Trustee or an officer of the Trust (as the case may be), if:

(i) the contract or transaction is confirmed or approved by Special Resolution; and

(ii) the nature and extent of interest of the Trustee or an officer of the Trust (as the case may be) in the contract or transaction are disclosed in reasonable detail in the notice calling the meeting or in any information circular required to be provided in connection with such meeting.

(j) In the event that a meeting of Unitholders is called to confirm or approve a contract or transaction or any proposed contract or transaction which is the subject of a notice given to the Trustees under this Section 8.7, the notice and extent of the interest in the contract or transaction or proposed contract or transaction of the person giving such notice shall be disclosed in reasonable detail in the notice calling the meeting of Unitholders or in any information circular required to be provided by this Trust Indenture or by law.

8.8 Voting of Securities Held by the Trust

Any securities of any person held from time to time by the Trustees as part of the Trust Property may be voted by the Trustees (or any one of them, in such manner as is authorized by the Trustees) at any and all meetings of security holders thereof at which the holders of such securities are entitled to vote or in any written action or consent by such security holders.

8.9 Restrictions on Trustees' Powers and their Exercise

- (a) The Trustees shall not, without the approval of the Unitholders by Ordinary Resolution, take any of the actions set forth in Schedule A annexed hereto and incorporated herein by reference.
- (b) The Trustees shall not, without the approval of the Unitholders by Special Resolution, take any of the actions set forth in Schedule B annexed hereto and incorporated herein by reference.
- (c) The following matters, in order to become effective after the Date of Closing, must be approved by a majority of the Independent Trustees, acting reasonably:
 - (i) a material change to the Management Agreement, or any extension thereof, which includes, for greater certainty, any increase in fees or other amounts payable by the Trust or any of its affiliates thereunder; and
 - (ii) the terms of any agreement entered into by the Trust or any of its affiliates with a Manager Trustee, the Manager or any affiliate thereof.
- (d) Litigation to be taken by the Trust against, or the defence of any litigation brought by, a Manager Trustee, the Manager or any affiliate thereof, must be approved by a majority of the Independent Trustees or, if decided by the Independent Trustees, approved by Ordinary Resolution of the Unitholders.
- (e) Except with respect to the above matters set out in this Section 8.9 and the matters set forth elsewhere in this Trust Indenture expressly requiring or permitting the approval of any of the Unitholders, no action taken by any of the Unitholders at any meeting, nor any resolution passed by any of the Unitholders shall in any way bind the Trustees.

8.10 Banking

- (a) The banking activities of the Trust, or any part thereof, shall be transacted with such bank, trust company, or other firm or corporation carrying on a banking business as the Trustees may designate, appoint or authorize from time to time and all such banking activities, or any part thereof, shall be transacted on behalf of the Trust by the Trustees, officers of the Trust or such other persons as the Trustees

may designate, appoint or authorize from time to time, including, without limitation, the following activities:

- (i) the operation of the accounts of the Trust;
 - (ii) the making, signing, drawing, accepting, endorsing, negotiation, lodging, depositing or transferring of any cheques, promissory notes, drafts, acceptances, bills of exchange and orders for the payment of money;
 - (iii) the giving of receipts for orders relating to any property of the Trust;
 - (iv) the execution of any agreement or instrument relating to any property of the Trust; and
 - (v) the execution of any agreement relating to any such banking activities and defining the rights and powers of the parties thereto, and the authorizing of any officer of such banker to do any act or thing on the Trust's behalf to facilitate such banking activities.
- (b) In connection with the establishment by the Bank of Montreal, as agent (the "**Agent**"), and other lenders (collectively, the "**Lenders**") of certain syndicated credit facilities as amended, modified, varied or restated (collectively, the "**Facilities**") in favour of Enbridge Income Partners LP (the "**Partnership**"), the Trustees are hereby authorized (i) to postpone and subordinate, in right of payment, all present and future indebtedness, liabilities and obligations of the Partnership and affiliates thereof owed to the Trust to all present and future indebtedness, liabilities and obligations of the Partnership and affiliates thereof to the Agent and the Lenders under or pursuant to the Facilities and other credit documents delivered in respect thereof (ii) from time to time as may be required under the Facilities, to enter into a subordination agreement with the Agent, the Lenders, the Partnership and affiliates thereof, and others to provide for a postponement and subordination on terms requested by the Agent or the Lenders, and (iii) to do all such other acts and things as are necessary or desirable (including those incidental or ancillary in nature) in order to carry out and give effect to the Facilities and the transactions contemplated thereby, including providing or causing to be provided, to any person, guarantees, indemnities, acknowledgements, assurances or other credit support, in any form whatsoever.

8.11 Fees and Expenses

As part of the expenses of the Trust, the Trustees may pay or cause to be paid reasonable fees, costs and expenses incurred in connection with the administration and management of the Trust and in connection with the discharge of any of the Trustees' duties herein, including, without limitation, fees, costs and expenses of auditors, accountants, lawyers, appraisers and other professional advisors employed by or on behalf

of the Trust (including the Manager) and the cost of reporting to and giving notices to Unitholders. All costs, charges and expenses properly incurred by the Trustees on behalf of the Trust shall be payable out of the Trust Property.

ARTICLE 9 AMENDMENTS TO THE TRUST INDENTURE

9.1 Amendment

The provisions of this Trust Indenture may only be amended by Special Resolution except where specifically otherwise provided herein, including any amendments made in accordance with the terms of Section 9.2, 9.3 or Section 2(b) of Schedule E.

9.2 Amendment without Approval

Notwithstanding anything herein contained (but subject to Section 9.3), the provisions of this Trust Indenture may be amended by the Trustees at any time and from time to time, without the consent, approval or ratification of the Unitholders or any other person:

- (a) on or prior to the Date of Closing, for any purpose in the sole discretion of the Trustees; or
- (b) at any time for the purpose of:
 - (i) ensuring continuing compliance, by the Trust, with applicable laws, regulations, requirements or policies of any Governing Authority having jurisdiction over the Trustees or the Trust;
 - (ii) providing, in the opinion of the Trustees, additional protection for the Unitholders, or to preserve or clarify the provision of desirable tax treatment to Unitholders;
 - (iii) making minor corrections, or removing or curing any conflicts or inconsistencies between the provisions of this Trust Indenture or any supplemental indenture and the provisions of the Fund Trust Indenture or any agreement to which the Trust is a party or any applicable law or regulation of any jurisdiction or any prospectus filed with any Governing Authority with respect to the Trust, provided that, in the opinion of counsel to the Trust and the Trustees in each case, the rights of the Unitholders are not materially prejudiced thereby;
 - (iv) making amendments which, in the opinion of counsel to the Trust and the Trustees, are necessary or desirable in the interests of the Unitholders as a result of changes in taxation laws or in their interpretation or administration;

- (v) making amendments to Articles 1 and 5 and any related provisions as may be necessary or desirable in order to ensure that the provisions thereof properly reflect the distribution entitlements as set forth in the Prospectus; and
- (vi) making amendments hereto provided that, in the opinion of the Trustees, the rights of the Unitholders are not materially prejudiced thereby.

9.3 Further Restrictions on Amendments

No amendment shall be made to this Trust Indenture:

- (a) to modify the voting rights attributable to Common Units or reduce the fractional undivided beneficial interest in the Trust Property represented by any Common Unit without obtaining the consent of the holder of such Common Unit; and
- (b) to amend this Section 9.3, unless the consent of the holders of all of the Common Units then outstanding is obtained.

9.4 Notification of Amendment

As soon as shall be practicable after the making of any amendment pursuant to Section 9.2, the Trustees shall furnish written notification of the substance of such amendment to each Unitholder.

9.5 Trustees to Sign Amendment

When a vote of the Unitholders approves an amendment to this Trust Indenture, then the Trustees shall sign such documents as may be necessary to effect such amendment.

ARTICLE 10 MEETINGS OF UNITHOLDERS

10.1 Annual Meeting

There shall be an annual meeting of Unitholders at such time and place as the Trustees shall prescribe for the purpose of:

- (a) electing the Independent Trustees;
- (b) appointing the auditors of the Trust, if required; and
- (c) transacting such other business as the Trustees may determine or as may properly be brought before the meeting.

The inaugural annual meeting of Unitholders shall be held within 18 months after creating and settling the Trust and subsequently each annual meeting of Unitholders shall be held not later than 180 days after the end of each fiscal year of the Trust.

10.2 Other Meetings

- (a) The provisions of this Section 10.2 and the remainder of the provisions contained in Sections 10.3 to 10.8, inclusive, shall not only have application to meetings of Common Unitholders but shall be equally applicable, as the context requires, to meetings of Preferred Unitholders which are held for the purposes authorised in Section 2(b) of Schedule E; and, accordingly, such provisions (including the use of the word “Unitholders” throughout) shall be so construed and applied, *mutatis mutandis*, so as to give effect to such interpretation.
- (b) The Trustees shall have power at any time to call special meetings of the Unitholders (whether Common Unitholders or Preferred Unitholders) at such time and place as the Trustees may determine or the Manager may request (and, for greater certainty, the Trustees shall call a special meeting of Unitholders upon request of the Manager).
- (c) Unitholders holding in the aggregate not less than 5% of the votes attached to outstanding Units of the Trust entitled to vote in respect of the meeting to be requisitioned may requisition the Trustees to call a special meeting of Unitholders (whether Common Unitholders or Preferred Unitholders, as the case may be) for the purposes stated in the requisition. The requisition shall (A) be in writing, (B) set forth the name and address of, and number of Units (which in the aggregate must not be less than 5% of the votes attached to outstanding Units entitled to be voted in respect of the meeting) held by, each person who is supporting the requisition, and (C) shall state in reasonable detail the business to be transacted at the meeting and shall be sent to each of the Trustees at the head office of the Trust. Upon receiving a requisition complying with the foregoing, the Trustees shall call a meeting of Unitholders to transact the business referred to in the requisition, unless:
 - (i) a record date for a meeting of Common Unitholders or Preferred Unitholders, as applicable, has been fixed;
 - (ii) the Trustees have called a meeting of Common Unitholders or Preferred Unitholders, as applicable, and have given notice thereof pursuant to Section 10.3; or
 - (iii) in connection with the business as stated in the requisition:
 - (1) it clearly appears that a matter covered by the requisition is submitted by the Unitholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the Trust,

- the Trustees, the officers of the Trust, the Unitholders, the Manager (or any associate or affiliate of the Manager) or the Fund, or primarily for the purpose of promoting general economic, political, religious, social or similar causes or primarily for a purpose that does not relate in a significant way to the business or affairs of the Fund;
- (2) the Trust, at the Unitholder's request, included a matter substantially the same as a matter covered by the requisition in an information circular relating to a meeting of Common Unitholders or Preferred Unitholders, as applicable, held within 30 months preceding the receipt of such requisition and the Unitholder failed to present the matter, in person or by proxy, at the meeting;
 - (3) substantially the same matter covered by the requisition was submitted to Common Unitholders or Preferred Unitholders, as applicable, in an information circular relating to a meeting of such Unitholders held within 30 months preceding the receipt of such requisition and the matter covered by the requisition was defeated; or
 - (4) the rights conferred by this Section 10.2 are being abused to secure publicity.
- (d) If there shall be no Trustee or if the Trustees do not, within 21 days after receiving the requisition, call a meeting (except where the grounds for not calling the meeting are one or more of those set forth in subsection 10.2(c) above), the Manager or any Unitholder who signed the requisition may call the meeting in accordance with the provisions of this Article 10, *mutatis mutandis*.

10.3 Notice of Meeting of Unitholders

Notice of all meetings of the Unitholders shall be given or sent by the Trustees in any manner permitted by Section 15.1 provided it is a manner permitted by Canadian securities legislation, to each Unitholder entitled to such notice at his address appearing in the applicable Register, to each of the Trustees, to the Auditors and to any others required by applicable law, not less than 21 nor more than 50 days (or within such other time periods as required by Alberta securities law as applicable to reporting issuers thereunder) before the meeting but may be waived in writing by any Unitholders either before or after such meeting. The attendance of a Unitholder at a meeting shall constitute a waiver of notice of such meeting except where a Unitholder attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened. Notice of any meeting of Unitholders shall state the purposes for which the meeting is being called.

10.4 Quorum: Chairman

A quorum for any meeting of Unitholders shall be one or more individuals present and being Unitholders or representing, by proxy, Unitholders, and who hold in the aggregate not less than 5% of the total number of outstanding Units entitled to be voted at the meeting. In the event of such quorum not being present at the appointed place on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such meeting, the meeting, if called by request of Unitholders, shall be terminated and, if otherwise called, shall stand adjourned to a day not less than 14 days later and to such place and time as may be determined by the chairman of the meeting. If at such adjourned meeting a quorum as above defined is not present, the Unitholders entitled to vote at such meeting and present either personally or by proxy shall form a quorum, and any business may be brought before or dealt with at such an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same. The Chairman, if any, or any Trustee (as determined by the Trustees), shall be the chairman of any meeting of Unitholders.

10.5 Voting

- (a) Except for meetings of Preferred Unitholders called for the purposes set forth in Section 2(b) of Schedule E, the holders of the Common Units shall be entitled to receive notice of and to attend all meetings of the Unitholders of the Trust, either in person or by proxy, and shall be entitled to one (1) vote in respect of each Common Unit held at all such meetings. Any action to be taken by the Common Unitholders shall, except as otherwise required by this Trust Indenture or by law, be authorized when approved by an Ordinary Resolution. The chairman of any such meeting shall not have a second or casting vote.
- (b) Notwithstanding any provision of this Trust Indenture:
 - (i) except as expressly provided in Section 2(b) of Schedule E, no holder of Preferred Units shall be entitled to receive notice of or to attend any meeting of Unitholders or to vote at any such meeting or to vote in respect of any matter whatsoever requiring Unitholder approval pertaining to the Trust (whether at a meeting or by written resolution); and
 - (ii) where a matter requires approval by the Preferred Unitholders as provided in Section 2(b) of Schedule E, such matter shall not be validly approved or properly authorized hereunder, and no action shall be taken by the Trust, the Trustees or any other person to carry out or give effect to any such matter, until such matter has been approved by Preferred Unitholders as required by the terms of Schedule E.

10.6 Record Dates

For the purpose of determining those Unitholders who are entitled to receive notice of and vote at any meeting or any adjournment thereof, or who are entitled to receive any distribution, or for the purpose of any other action, the Trustees may from time to time, without notice to Unitholders, close the transfer books for such period, not exceeding 30 days, as the Trustees may determine. Alternatively, with or without closing the transfer books, the Trustees may fix a date not more than 60 days prior to the date of any meeting of Unitholders (whether a meeting of Common Unitholders or Preferred Unitholders, as the case may be) or any distribution or any other action to be taken by the Trust, as a record date for the determination of Unitholders (whether Common Unitholders or Preferred Unitholders, as the case may be) entitled to receive notice of and to vote at such meeting or any adjournment thereof or to receive such distribution or to be treated as Unitholders of record for purposes of such other action, as the case may be. Any Unitholder who was a Unitholder (in respect of the class of Units in respect of which such meeting has been called), at the record date so fixed, shall be entitled to receive notice of and vote at such meeting or any adjournment thereof or to receive such distribution, or to be treated as a Unitholder of record for purposes of such other action, even though he has since that date disposed of his Units, and no person who becomes a Unitholder after that date shall be entitled to receive notice of and vote at such meeting or any adjournment thereof or to receive such distribution or to be treated as a Unitholder of record for purposes of such other action.

10.7 Proxies

Whenever the vote or consent of Unitholders is required or permitted under this Trust Indenture, such vote or consent may be given either directly by the Unitholder or by a proxy in written form, electronic or other technologically enhanced form, or such other form as is acceptable to the Trustees acting reasonably. A proxy holder need not be a Unitholder. The Trustees may solicit such proxies from the Unitholders or any of them in respect of any matter requiring or permitting the Unitholders' vote, approval or consent in such manner as may be required or permitted by applicable law.

Provided not contrary to Alberta securities law as applicable to reporting issuers thereunder, the Trustees may adopt, amend or repeal such rules relating to proxies, including pertaining to the appointment of proxy holders and the solicitation, execution, validity, revocation and deposit of proxies, as they in their discretion from time to time determine, and such rules may be contained in the Trustees' Regulations.

10.8 Resolution in Lieu of Meeting

A resolution signed in writing by Unitholders holding a proportion of all the outstanding votes attributable to all issued and outstanding Units entitled to vote on such resolution, where such proportion is equal to or greater than the proportion of votes required to be voted in favour of such resolution at a meeting of Unitholders to approve

that resolution, is as valid as if it had been passed at a meeting of Unitholders duly called and convened for the purpose of approving that resolution.

ARTICLE 11 TERMINATION OF THE TRUST

11.1 Term of the Trust

The term of the Trust commenced on December 22, 2002 and shall continue in full force and effect for a period which shall end twenty-one (21) years after the date of death of the last surviving issue of Her Majesty, Queen Elizabeth II, who was alive on December 20, 2002. The Trustees shall have throughout such term all the powers and discretion, expressed and implied, conferred upon them by law and by this Trust Indenture.

11.2 Distribution of Trust Property by Vote of Unitholders

Notwithstanding the provisions of Article 8, if a Special Resolution requires that the Trustees distribute to the Unitholders all Trust Property, the Trustees will be bound and obligated to make such distribution to the Unitholders in accordance with the terms of this Trust Indenture, including those rights, privileges, restrictions and conditions attaching to the Common Units and the Preferred Units (including those pertaining to their rights of participation in distributions of Trust Property upon the liquidation, dissolution or wind-up of the Trust).

11.3 Effect of Termination

Upon the wind-up or termination of the Trust or the affirmative vote referred to in Section 11.2, the liabilities of the Trust shall be discharged in an expeditious manner and the net assets of the Trust shall be liquidated and the proceeds distributed to the Unitholders in accordance with the rights, privileges, restrictions and conditions attaching to the Common Units and the Preferred Units. Such distribution may be made in cash or in kind or partly in each, as the Trustees in their sole discretion may determine.

11.4 Procedure Upon Termination

Forthwith upon being required to commence to wind-up or terminate the affairs of the Trust, the Trustees shall give notice thereof to the Unitholders, which notice shall designate the time or times at which Unitholders may surrender their Units for cancellation and the date at which the Register(s) of Units of the Trust shall be closed.

11.5 Powers of the Trustees Upon Termination

After the date on which the Trustees are required to commence to wind-up or terminate the affairs of the Trust, the Trustees shall carry on no activities except for the purpose of winding-up or terminating (as the case may be) the affairs of the Trust as

hereinafter provided and, for this purpose, the Trustees shall continue to be vested with and may exercise all or any of the powers conferred upon the Trustees under this Trust Indenture.

11.6 Further Notice to Unitholders

In the event that less than all of the Unitholders have surrendered their Units for cancellation within six (6) months after the time specified in the notice referred to in Section 11.4, the Trustees shall give another notice to the remaining Unitholders to surrender their Units for cancellation and if, within one (1) year after the further notice, all the Units shall not have been surrendered for cancellation, such remaining Units shall be deemed to be cancelled without prejudice to the rights of the holders of such Units to receive their respective share of the remaining Trust Property to which they are entitled by the terms of this Indenture, and the Trustees may either take appropriate steps, or appoint an agent to take appropriate steps, to contact such Unitholders (deducting all expenses thereby incurred from the amounts to which such Unitholders are entitled as aforesaid) or, in the discretion of the Trustees, may pay such amounts into court (or to such other suitable government official or agency) whose receipt shall be a good release, acquittance and discharge of the obligations of the Trustees with respect to such amounts.

11.7 Responsibility of the Trustees after Sale and Conversion

The Trustees shall be under no obligation to invest the proceeds of any sale of investments or other assets or cash forming part of the Trust Property after the date referred to in Section 11.5 and, after such sale, the sole obligation of the Trustees under this Trust Indenture shall be to hold such proceeds for distribution, in accordance with the terms of Section 11.6.

ARTICLE 12 LIABILITY OF TRUSTEES, MANAGER AND UNITHOLDERS AND OTHER MATTERS

12.1 General Limitation of Liability and Indemnification

- (a) The Trustees, the Manager and consultants and agents of the Trust, in incurring any debts, liabilities or obligations, or taking or omitting any other actions for or in connection with the affairs of the Trust are, and shall be conclusively deemed to be, acting for and on behalf of the Trust, and not in their own personal capacities.
- (b) No Unitholder, in its capacity as such, or annuitant shall incur or be subject to any liability in contract or in tort or of any other kind whatsoever to any person in connection with the Trust Property or the obligations or the affairs of the Trust or with respect to any act performed by the Trustees or by any other person pursuant to this Trust Indenture or with respect to any act or omission of the Trustees or any other person in the performance or exercise, or purported performance or exercise,

of any obligation, power, discretion or authority conferred upon the Trustees or such other person hereunder or with respect to any transaction entered into by the Trustees or by any other person pursuant to this Trust Indenture. No Unitholder or annuitant shall be liable to indemnify the Trustees or any other person with respect to any such liability or liabilities incurred by the Trustees or by any such other person or persons or with respect to any taxes payable by the Trust or the Trustees or any other person on behalf of or in connection with the Trust; provided, however, to the extent that, notwithstanding the foregoing, any such liabilities are determined by a court of competent jurisdiction to be liabilities of the Unitholders and annuitants, such liabilities shall be enforceable only against, and shall be satisfied only out of, the Trust Property.

- (c) All reasonable efforts shall be made to ensure that every contract entered into by or on behalf of the Trust, whether by the Trustees, the Manager or otherwise, shall (except as a Trustee may otherwise expressly agree in writing with respect to personal liability of the Trustee) include a provision substantially to the following effect:

The parties hereto acknowledge that the Trustees or Manager, as applicable, are entering into this agreement solely in their capacity as Trustees or as agents as the case may be, on behalf of the Trust and the obligations of the Trust hereunder shall not be personally binding upon any of the Trustees, the Manager, any of the Unitholders or any annuitant, subscriber or beneficiary under a plan of which a Unitholder is a trustee or carrier (an "annuitant") and that any recourse against the Trust, the Trustees, the Manager, any Unitholder or annuitant in any manner in respect of any indebtedness, obligation or liability of the Trust arising hereunder or arising in connection herewith or from the matters to which this agreement relates, if any, including without limitation claims based on negligence or otherwise tortious behaviour, shall be limited to, and satisfied only out of, the Trust Property as defined in the Trust Indenture amended and restated as of May 1, 2006, as the same may be further amended.

The rights conferred by any such provision shall be held in trust and enforced by the Trustees for their benefit and for the benefit of the Manager, the Unitholders and annuitants, as applicable. The omission of such a provision from any such written agreement shall not operate to impose personal liability on the Trustees, the Manager or any Unitholder or annuitant.

- (d) If, contrary to the provisions of subsections 12.1(a) and (b), any Unitholder or annuitant shall be held personally liable as such to any other person in respect of

any debt, liability or obligation incurred by or on behalf of the Trust, or any action taken on behalf of the Trust, such Unitholder or annuitant shall be entitled to indemnity and reimbursement out of the Trust Property to the full extent of such liability and to the costs of any litigation or other proceedings in which such liability shall have been determined, including, without limitation, the reasonable fees and disbursements of counsel. The rights accruing to a Unitholder or annuitant under this subsection 12.1(d) shall not exclude any other rights to which such Unitholder or annuitant may be lawfully entitled, nor shall anything herein contained restrict the right of the Trustees to indemnify or reimburse a Unitholder or annuitant out of the Trust Property in any appropriate situation even though not specifically provided herein, but, for greater certainty, the Trustees shall have no liability to reimburse Unitholders or annuitants for taxes assessed against them by reason of their ownership of Units, nor for any losses suffered by reason of changes in the market value of investments forming part of the Trust Property.

- (e) The Trustees shall not be liable to any Unitholder or annuitant for any action taken in good faith in reliance on any documents that are, *prima facie*, properly executed, for any depreciation of, or loss to, the Trust incurred by reason of the retention or sale of any property, for any inaccuracy or omission in any evaluation provided by the Manager or any other appropriately qualified person, for relying on any such evaluation, for any action or failure to act of the Manager, or for any other action or failure to act (including, without limitation, the failure to compel in any way any former trustee to redress any breach of trust or any failure by the Manager to perform its duties under this Trust Indenture or any material contract), unless such liabilities arise from a breach of the Trustees' standard of care as set out in Section 8.4 or the Trustees' gross negligence, wilful default or fraud.

The Trustees shall not be liable to any Unitholder or annuitant for any action or failure to act which is taken in good faith in relation to any matter arising from or relating to this Trust Indenture or any material contract where such action or failure to act is based upon the opinion or advice of or information obtained from any Expert, provided that the Trustees have satisfied their standard of care in Section 8.4 in selecting such Expert.

12.2 Indemnification of Trustees

If (i) a Trustee has acted honestly and in good faith with a view to the best interests of the Trust and the Unitholders, and (ii) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the Trustee had reasonable grounds to believe his conduct was lawful, the Trust (to the extent of the assets of the Trust) is liable to, and shall indemnify and save harmless each Trustee, his heirs, executors, administrators and other legal representatives in respect of:

- (a) any liability and all costs, charges and expenses sustained or incurred in respect of any action, suit or proceeding that is proposed or commenced against such Trustee

for or in respect of anything done or permitted to be done in respect of the Trust and the execution of all duties, responsibilities, powers and authorities pertaining thereto;

- (b) all other costs, charges, taxes, penalties and interest in respect of unpaid taxes and all other expenses and liabilities sustained or incurred by such Trustee in respect of the administration or termination of the Trust (excluding, however, any and all taxes on any income of a Trustee); and
- (c) any loss, expense, claim, liability or asserted liability (including strict liability and including costs and expenses of abatement and remediation of spills or releases of contaminants and including liabilities of indemnified parties to third parties in respect of bodily injuries, property damage, damage to or impairment of the environment) incurred as a result of the administration of the trust created hereby, or the exercise by such Trustee of any of the rights under this Trust Indenture including, without limitation, those which result from or relate, directly or indirectly, to the presence or release of any contaminants on property which the Trust or any affiliate thereof has an interest in or is responsible for, any contaminant present or released from any property contiguous to the property which the Trust or any affiliate thereof has an interest in or is responsible for; or the breach or alleged breach of any environmental laws by the Trust or an affiliate thereof.

This indemnification shall survive the termination of the Trust and the resignation or removal of the Trustee in question.

12.3 Execution of Instruments and Apparent Authority

- (a) Any instrument executed in the name of the Trust or on behalf of the Trust by any of the Trustees or the Manager shall constitute and shall be deemed to constitute a valid obligation of the Trust enforceable in accordance with its terms as if executed by the Trustees. The Trustees hereby expressly approve and ratify the actions taken or to be taken by the Manager to execute and file the Prospectus and the stock exchange listing application necessary to qualify the Fund Units for sale to the public and to have them listed and posted for trading on the Toronto Stock Exchange.
- (b) No purchaser, transfer agent or other person dealing with any of the Trustees shall be bound to make any enquiry concerning the validity of any transaction purporting to be made, on behalf of the Trust, by one or more of the Trustees or make enquiry concerning, or be liable for, money or property paid, lent or delivered to or on the order of the Trustees. Any person dealing with the Trust in respect of any matters pertaining to the Trust Property and any right, title or interest therein, or pertaining to the Trust or to the Units shall be entitled to rely on a certificate, statutory declaration or resolution executed or certified by any of the Trustees as to the

capacity, power and authority of the Trustees, the Manager, any consultant or agent or any other person to act for and on behalf and in the name of the Trust. No person dealing with any of the Trustees, the Manager, or any consultant or agent of the Trust, shall be bound to see to the application of any funds or property passing into the hands or control of any such Trustee, Manager, consultant or agent of the Trust. The receipt by any of the Trustees, the Manager, or authorized consultants or agents of the Trust, for moneys or other consideration, shall be binding upon the Trust.

12.4 Reliance

- (a) The Trustees shall be entitled to rely on statements from, the opinion or advice of, or information from the Manager, the Auditor, counsel, valuator, engineer, surveyor, appraiser or other expert whose profession gives authority to a statement made by them on the subject in question (herein “**Experts**”), provided that the Trustees have satisfied their standard of care in Section 8.4 in selecting such Expert.
- (b) The Trustees shall be fully protected from liability in relying in good faith upon statements or information from, the opinion or advice of, or any instruments or directions given by, an officer, director, employee or agent of the Manager or by a broker, a custodian or any Unitholder, or by such other parties as may be authorized to give instructions or directions to the Trustees. If required by the Trustees, the Manager shall file with the Trustees a certificate of incumbency setting forth the names and titles of parties authorized to give instructions or directions to the Trustees together with specimen signatures of such persons and the Trustees shall be entitled to rely on the latest such certificate of incumbency filed with them. The Trustees and the Manager shall each be fully protected from liability in acting upon any instrument, certificate or paper believed by them or it to be genuine and signed or presented by the proper person or persons. For greater certainty, in discharging any duties ascribed to them hereunder, the Trustees shall be entitled to rely upon the statements, advice or opinions referred to in subsection 12.1(e).

12.5 Delegation of Powers

The Trustees may appoint from among their number one or more individuals and may, subject to applicable laws and to any provision hereof to the contrary, delegate to such individuals any of the powers of the Trustees hereunder.

The Trustees may also, subject to Section 13.1, applicable laws and any provision hereof to the contrary, delegate any of the powers of the Trustees hereunder as they, in their sole discretion, may deem necessary or desirable, to any persons (including the Manager) as the Trustees may deem appropriate; and the Trustees shall have the absolute discretion to define the scope of and manner in which such powers will be exercised by

such persons, without regard to whether such authority is normally granted or delegated by trustees. For greater certainty, following Closing, the grant or delegation of authority and powers to the Manager must be approved by the Independent Trustees, as set forth in Section 13.1.

In respect to any delegation by the Trustees of any of their powers as permitted hereunder to any person whomsoever, the Trustees, in their absolute discretion, shall be permitted to authorize a delegate to further sub-delegate any such powers.

ARTICLE 13 DELEGATION OF POWERS TO MANAGER

13.1 Delegation Permitted to the Manager

- (a) The Trust, and the Trustees on its behalf, is hereby authorized to enter into, with the Manager, the Management Agreement in order to give effect to the grant and delegation to the Manager of such authority and powers as are set forth therein, without regard to whether such authority or powers are normally granted or delegated by trustees, including the grant or delegation of broad discretion to the Manager to administer and manage the day-to-day operations of the Trust, to act as agent for the Trust, to execute documents on behalf of the Trust and to make executive decisions for and on behalf of the Trust. The Manager shall have the authority, powers and duties delegated thereto or otherwise expressly provided for in the Management Agreement and pursuant to the terms of this Indenture.
- (b) Following Closing, and except as expressly prohibited by law, the Trustees on behalf of the Trust may, in addition to the authority and powers authorized to be granted and delegated to the Manager pursuant to subsection 13.1(a) above, grant or delegate to the Manager such authority and such powers as the Independent Trustees may in their sole discretion deem necessary or desirable in connection with advancing the Business and interests of the Trust, without regard to whether such authority is normally granted or delegated by trustees, and for such purposes the Trust may enter into, subject to Article 8, one or more contracts with the Manager relating to the Manager's authority, term of appointment, compensation and any other matters deemed desirable by the Independent Trustees.

13.2 Sub-Delegation

In respect of any delegation by the Trustees of any of their powers and authorities, as permitted under this Article, the Trustees, in their absolute discretion, shall be permitted to authorize a delegate to further sub-delegate any such powers and authorities.

13.3 Liability of Trustees

The Trustees shall have no liability or responsibility for any acts or omissions of the Manager (or any sub-delegate thereof) arising hereunder or under the Management Agreement. To the extent that the Trustees have delegated the performance of certain duties and activities otherwise to be performed by them to the Manager, the Trustees shall be deemed to have satisfied their standard of care under Section 8.4 in respect of the performance of such duties and activities.

13.4 Power and Authority of Manager

The Manager is hereby granted full and absolute right, power and authority to undertake, perform and provide, for and on behalf of the Trust, all of the Indenture Conferred Duties and to take and do, for and on behalf of the Trust, in connection with the provision of all such Indenture Conferred Duties, all such actions and all such things which the Manager deems appropriate, in its sole discretion, including the right, power and authority to retain and instruct such appropriate experts or advisors to perform those duties and obligations granted to the Manager which it is not qualified to perform, to execute and deliver contracts, leases, licenses, and other documents, instruments and agreements, to make all applications and filings with Governing Authorities, and to take such other actions as the Manager considers appropriate, in the name of and on behalf of the Trust.

Without limiting the generality of the foregoing paragraph, the Manager is hereby delegated, by the Trustees, the authority and power to act for and behalf of the Trust, to execute documents on behalf of the Trust and to make executive decisions, subject always to compliance (as applicable) with subsection 8.9(c), for and on behalf of the Trust in connection with the matters referred to in subsections 8.2(jj), 8.2(kk) and 8.10(b) hereof and the Manager is hereby further authorized and directed, without further action or authorization of the Trustees, to execute and deliver, in the name of the Trust, the subordination agreement referred to in subsection 8.10(b) hereof, together with such other agreements, indentures, instruments or other documents as are necessary in connection therewith, all on such terms and conditions as the Manager considers acceptable in the circumstances.

13.5 Terms and Conditions Pertaining to Performance of Duties

The term, conditions and limitations applicable in respect to the exercise and performance, by the Manager, of the Indenture Conferred Duties are set forth in the Management Agreement and are hereby incorporated herein by reference and the parties hereto agree that such terms, conditions and limitations shall apply in all respects to the Manager in the exercise and performance of the Indenture Conferred Duties as fully as if such rights, restrictions and limitations were set forth herein. The terms, conditions and limitations as contained in this Indenture pertaining to the exercise and performance, by the Manager, of the Indenture Conferred Duties shall be construed, as far as possible, so as not to conflict with the terms, conditions and limitations contained in the Management

Agreement, however in the case of conflict the terms, conditions and limitations contained in the Management Agreement shall govern.

13.6 No Partnership or Joint Venture

Neither the Trust, the Trustees nor the Unitholders are and they shall be deemed not to be partners or joint venturers with the Manager and nothing herein shall be construed so as to impose any liability as such on the Manager. The parties agree that the Manager shall perform the Indenture Conferred Duties as an independent contractor for and on behalf of the Trust (with its duties and obligations in respect thereto as expressly provided for herein and in the Management Agreement), and it is acknowledged and agreed that only where the Manager undertakes execution of contracts or other instruments for and on behalf of the Trust may the Manager then be acting as an agent of the Trust. In no circumstances shall the Manager be, or be deemed to be, a fiduciary or trustee for any person, whether or not a party hereto, in connection with the discharge by the Manager of its duties to, for and on behalf of, the Trust.

13.7 Affiliate Activities

The Trustees, the Trust, the Fund and each of the Unitholders hereby acknowledge and agree that:

- (a) Enbridge Inc. and its affiliates and associates, other than the Manager (collectively, the “**Enbridge Parties**”), may be engaged in, or hereafter become engaged in, any business or activities whatsoever (the “**Permitted Activities**”), and such Permitted Activities may be in competition or conflict with the business carried on by, or the interests of, the Trust or its affiliates and associates and, for further certainty, may involve (A) the provision of services, to any persons whomsoever, which are the same as or similar to those provided to the Trust by the Manager hereunder or pursuant to the terms of the Management Agreement, (B) engaging in the business of, or in activities pertaining directly or indirectly to, and/or the direct and indirect ownership, management, operation and lease of assets and property in connection with, energy infrastructure (and all activities related thereto), (C) acquiring and otherwise dealing with investments and other direct or indirect rights in persons involved in the business of, or in activities pertaining directly or indirectly to, energy infrastructure (and all activities related thereto), and (D) engaging in all activities ancillary or incidental to any of the foregoing; and the Trust hereby expressly consents to the conduct of any and all such Permitted Activities by the Enbridge Parties and agrees that, subject as hereinafter provided in this Section 13.7, nothing herein shall prevent any of the Enbridge Parties, or any of their respective officers, directors, or employees from having business interests or from engaging in any business activities whatsoever even though such business interests or activities may be similar to or competitive with the interests or activities of

the Trust or its affiliates or associates, or from rendering services to any other person even though such person may have investment or business interests similar to, or competitive with, those of the Trust or its affiliates or associates;

- (b) In the event that, following Closing, the interests of the Enbridge Parties come into material conflict with those of the Trust or its affiliates or associates with respect to any matter or transaction, the Manager shall give written notice to the Trust briefly setting forth particulars of such conflict and thereafter, subject to compliance with subsection 8.9(c), the Trustees shall be responsible to take all such actions and make all such decisions relating to the matters giving rise to the conflict of interest; and
- (c) Unless otherwise expressly agreed between any of the Enbridge Parties or the Manager, on the one hand, and the Trust or any of its affiliates or associates, on the other hand, neither the Enbridge Parties nor the Manager shall be obligated to offer any business opportunities to the Trust or its affiliates or associates.

Notwithstanding the provisions of subsection 13.7(a) above, the Enbridge Parties may not hereafter become engaged in any Permitted Activities if such activities, when objectively viewed (and acting reasonably) as at the time at which such activities are proposed to be engaged in, would constitute, or would be reasonably likely to give rise to, a material adverse change in the financial affairs of the Trust unless such activities have been declined by the Trust and have been, or are reasonably likely to be, undertaken by third parties; provided, however, that nothing in this Section 13.7 or in any other provision herein contained shall prohibit or restrain, or be construed as prohibiting or restraining, any of the Enbridge Parties from continuing to carry-on, be engaged in, and develop any business or activity whatsoever where same is being carried on, engaged in, or developed by any of the Enbridge Parties as at June 23, 2003, irrespective of whether or not such business or activity may be viewed as materially adverse to the business or financial affairs of the Trust.

13.8 Assignment

Concurrent with any assignment by the Manager of its right, title and interest under the Management Agreement, the Manager is hereby required and is authorized to take all requisite action to assign all of its right, title and interest hereunder to the same person to whom the Manager assigns its rights under the Management Agreement. Unless otherwise agreed, such assignment shall take place on the same terms and conditions as the assignment of the Manager's rights under the Management Agreement, including with respect to the terms of any release of the Manager with respect to its duties and obligations from and after the date of such assignment. Other than the foregoing, the Manager shall not sell or assign its right, title and interest in and under this Indenture to a third party without the prior written consent of a majority of the Independent Trustees, which consent

shall not be unreasonably withheld; provided that the Manager may, without the consent of a majority of the Independent Trustees, assign or sell its interest in this Indenture to an affiliate.

13.9 Termination of Manager's Duties

- (a) The Manager shall continue as a party hereto until the earlier of the date of termination of the Trust and such time as the Manager ceases to be the manager of the Trust pursuant to the Management Agreement, including whether through assignment or termination of such agreement, at which time, and without any further action required whatsoever on the part of the Trust, the Trustees, the Unitholders or the Manager, (i) the Manager shall immediately and unconditionally be deemed to have ceased to be a party hereto (as manager hereunder) for all purposes and (ii) all obligations and duties of the Manager hereunder shall immediately and unconditionally terminate and the Manager shall be deemed to be released from all obligations and duties hereunder from and after such time (except in the case of an assignment to an affiliate of the Manager, unless otherwise agreed to by the Independent Trustees); provided however that such Manager shall continue to be entitled to payment of any amounts owing by the Trust to the Manager which accrued prior to the Manager ceasing to be a party hereto, and to the benefit of any indemnity and limitation of liability provisions and other provisions which by their nature continue to have effect or application, whether set out herein or in the Management Agreement; and further provided that each of the Trust and the Trustees shall execute and deliver such further documents and instruments and do all such acts and things as the Manager may request in order to effectively carry out, better evidence, give effect to or perfect the intent of this subsection 13.9(a).
- (b) From and after the date upon which the Manager ceases to be a party hereto (as manager hereunder), in accordance with the terms of subsection 13.9(a) above, the Trustees shall be and be deemed to be obligated and liable in all respects hereunder for the exercise and performance of any duties of the Manager hereunder.

13.10 Performance of Duties

If there is no manager, or the Manager is unable or unwilling to perform its obligations under this Indenture or the Management Agreement, the Trustees shall either perform all duties of the Manager hereunder and thereunder or shall engage another person that is duly qualified to perform such obligations.

ARTICLE 14
SUPPLEMENTAL INDENTURES

14.1 Provision for Supplemental Indentures

The Trustees may, subject to the provisions hereof, and they shall, when so directed in accordance with the provisions hereof, execute and deliver indentures or instruments supplemental hereto, which thereafter shall form part hereof, for any one or more or all of the following purposes:

- (a) modifying or amending any provisions of this Trust Indenture in the circumstances set forth in Article 9 where the Trustees may do so without the consent, approval or ratification of the Unitholders or any other person; and
- (b) modifying or amending any provisions of this Trust Indenture where the modification or amendment has been consented to, approved or ratified by some or all of the Unitholders (as the case may be) to the extent required in accordance with the provisions of this Trust Indenture.

ARTICLE 15
GENERAL

15.1 Notices to Unitholders

- (a) Any notice, communication or other document required to be given or sent to Unitholders under this Trust Indenture or by law, shall be given or sent by personal service or through ordinary post addressed to each registered holder at his or her last address appearing on the applicable Register or in any other manner from time to time permitted by Alberta securities law as applicable to reporting issuers thereunder, including internet based or other electronic communication; provided that if any such notice or communication shall have been mailed and either prior to or subsequent to such mailing (but prior to delivery of such notice or communication) regular mail service shall have been interrupted by reason of a strike, lockout or other work stoppage, actual or threatened, involving postal employees, such notice or communication shall be deemed to have been received 48 hours after 12:01 a.m. on the day following the resumption of normal mail service; provided further that during the period that regular mail service shall be interrupted, notice may be given by personal service, or by internet based or other electronic communication (provided done so in accordance with all requirements of Canadian securities law as applicable to reporting issuers).
- (b) For the avoidance of doubt, in connection with any notice, communication or other documents permitted by Alberta securities law (as applicable to reporting issuers thereunder) to be given or sent by internet based or other electronic communication, the requirements of such Alberta securities law in respect of such

delivery shall be complied with in all respects, including where required, receipt by the Trust of the prior consent of the recipient to the delivery of such notice, communication or other document in electronic or other technologically enhanced format.

- (c) Any notice given in the manner provided in subsection 15.1(a) shall be deemed to have been given and delivered (i) in the case of notice given by mail, on the day following that on which the letter or other document was mailed, or (ii) in the case of notice given by publication, after publication of such notice twice in the designated newspaper or newspapers, or (iii) in the case of notice given by internet based or other electronic communication, on the later of (A) the Business Day on which such notice is given and (B) the earliest day and at the earliest time (as applicable) as is permissible in accordance with Alberta securities law (as applicable to reporting issuers thereunder) where it permits the giving of notice via such internet based or other electronic communication. In proving notice was posted, it shall be sufficient to prove that such letter or other document was properly addressed, stamped and posted.

15.2 Notices to Trustees

Any notice or other document or written communication to be given to the Trustees shall be given or sent by personal service, ordinary post or facsimile transmission, in each case addressed to the particular Trustee at his or her last address (or in the case of facsimile, last facsimile number) appearing in the records of the Trust, such notice or communication shall be deemed to have been given on the date of delivery or, if mailed, 5 days from the date of mailing or, if sent by facsimile, on the date of transmittal if transmitted on a Business Day during normal business hours, otherwise on the next Business Day following such transmittal. If any such notice or communication shall have been mailed and either prior to or subsequent to such mailing (but prior to delivery of such notice or communication) regular mail service shall have been interrupted by reason of a strike, lockout or other work stoppage, actual or threatened, involving postal employees, such notice or communication shall be deemed to have been received 48 hours after 12:01 a.m. on the day following the resumption of normal mail service; provided further that during the period that regular mail service shall be interrupted, any notice or other communication shall be delivered or given by personal delivery, facsimile transmission or other means of prepaid, transmitted or recorded communication.

15.3 Failure to Give Notice

The failure by the Trustees, by accident or omission or otherwise unintentionally, to give any Unitholder any notice provided for herein shall not affect the validity, effect or taking effect of any action referred to in such notice, and the Trustees shall not be liable to any Unitholder for any such failure.

15.4 Joint Holders

Service of a notice or document on any one of several joint holders of Units shall be deemed effective service on the other joint holders.

15.5 Service of Notice

Any notice or document delivered to a Unitholder pursuant to this Article shall, notwithstanding the death or bankruptcy of such Unitholder, and whether or not the Trustees have notice of such death or bankruptcy, be deemed to have been fully served and such service shall be deemed sufficient service on all persons having an interest in the Units concerned.

15.6 Trust Records

The Trustees shall prepare and maintain, or cause to be prepared and maintained, records containing (a) this Trust Indenture; (b) minutes of meetings and resolutions of Unitholders; (c) minutes of meetings and resolutions of the Trustees and any committee thereof; and (d) the Registers. The Trust shall also prepare and maintain adequate accounting records. All such records shall be kept at the head office of the Trust or at such other place as the Trustees think fit and shall at all reasonable times be open to inspection by the Trustees.

15.7 Information Available to Unitholders

- (a) Each Unitholder and, subject to subsection 15.7(c), such holder's legal representatives, have the right to obtain, on demand and on payment of reasonable reproduction costs, from the head office of the Trust:
 - (i) a copy of this Trust Indenture and any amendments thereto; and
 - (ii) the minutes of the meetings of Unitholders and any written resolutions of Unitholders passed in lieu of holding a meeting of Unitholders.
- (b) Each Unitholder and, subject to subsection 15.7(c), such holder's legal representatives, shall be entitled to inspect and, on payment of a reasonable fee therefor, obtain a list of the Unitholders for purposes connected with the Trust to the same extent and upon the same conditions as those which apply to shareholders of a corporation, governed by the *Canada Business Corporations Act*, who are seeking to examine or obtain a list of shareholders of that corporation.
- (c) Prior to releasing or disclosing, to a Unitholder's legal representatives, any of the information or documentation referred to in subsections 15.7(a) and (b) above, the Trustees or the Manager, at their request, shall be provided with evidence satisfactory to such Trustees or Manager, as applicable (acting reasonably) as to the

status of the person desiring to receive or review such information or documentation, as a legal representative of such Unitholder.

15.8 Reports to Unitholders

- (a) The Trustees will supply Unitholders with any information that may be required by them in connection with their obligations under the Income Tax Act and equivalent provincial legislation.
- (b) Notwithstanding anything herein contained, for so long as the Fund is a Unitholder the Trustees shall provide the Fund with:
 - (i) a written report describing any material change that occurs in the affairs of the Trust, which report shall include the content that the Trust would be required to include in a material change filing with applicable regulatory authorities were it a reporting issuer (or equivalent) under applicable securities laws in the jurisdictions in which the Fund is a reporting issuer (or equivalent); and
 - (ii) all financial statements that the Trust would be required to file with applicable regulatory authorities if the Trust were a reporting issuer (or equivalent) under applicable securities laws in the jurisdictions in which the Fund is a reporting issuer (or equivalent);

provided that such reports and statements will be delivered to the Fund in a timely manner so as to permit the Fund to comply with the continuous disclosure requirements relating to reports of material changes in its affairs and the delivery of financial statements as required under applicable securities laws and provided further that any such reports and statements that would, if the Trust were a reporting issuer, be required to be audited shall not be required to be audited unless an Auditor has been appointed for the Trust in respect of the applicable period to which such reports or statement (as the case may be) relate.

- (c) At any time where specifically requested in writing by a Unitholder, the Trust shall appoint an auditor for the Trust and then commence, beginning with the fiscal year in which such request is made, and thereafter continue to provide the following financial information to all Unitholders:
 - (i) within 140 days of the end of each fiscal year (or such shorter period as may be prescribed by law to apply to a reporting issuer under the *Securities Act* (Alberta)), and at least 21 days prior to each annual meeting of Unitholders, the Trustees shall send to each Unitholder a report, including audited annual comparative financial statements for such year, prepared in compliance with applicable laws; and

- (ii) within 60 days after the end of each of the first three fiscal quarters of each year (or such shorter period as may be prescribed by law to apply to a reporting issuer under the *Securities Act* (Alberta)), the Trustees shall send unaudited comparative financial statements for the period then ended to each Unitholder.

All such annual and interim financial statements shall be prepared in accordance with generally accepted accounting principles in Canada as recommended from time to time in the Handbook of the Canadian Institute of Chartered Accountants.

15.9 Fiscal Year

The fiscal year of the Trust shall terminate on December 31 in each year.

15.10 Taxation Information

On or before March 31 in each year, or such other date as may be required under applicable law, the Trust will provide to Unitholders who received distributions from the Trust in the prior calendar year, such information and forms as may be needed by such Unitholders in order to complete their tax returns in respect of the prior calendar year under the Income Tax Act and equivalent provincial and territorial legislation in Canada.

15.11 Income Tax: Obligations of the Trustee

The Trustees shall satisfy, perform and discharge all obligations and responsibilities of the Trustees under the Income Tax Act and neither the Trust nor the Trustees shall be accountable or liable to any Unitholder by reason of any act or acts of the Trustees consistent, or carried out in intended compliance, with any such obligations or responsibilities.

15.12 Qualification and Duties of Auditors

The Auditors, if appointed, shall be an independent recognized firm of chartered accountants which have an office in Canada and which are qualified to practice in all provinces and territories of Canada. The Auditors shall report to the Trustees and the Unitholders on the annual financial statements of the Trust and shall fulfil such other responsibilities as they may properly be called upon by the Trustees to assume. The Auditors shall have access to all records relating to the affairs of the Trust.

15.13 Appointment of Auditors

- (a) The Trustees may, at their discretion and at any time, appoint auditors for the Trust.
- (b) The Trustees shall appoint auditors for the Trust, either (i) upon receipt of written notice from a Unitholder pursuant to subsection 15.8(c), or (ii) if required to do so by applicable law.

- (c) With respect to any appointment of auditors of the Trust pursuant to subsections 15.13(a) or (b) above, the Trustees shall appoint, as the auditors of the Trust, such firm of accountants as is then currently serving as auditors of the Fund, to hold such office until the earlier of the next annual meeting of Unitholders or until their successors are appointed. Thereafter, the Auditors will be appointed by Unitholders at each succeeding annual meeting of Unitholders, unless the Unitholders subsequently resolve, by Ordinary Resolution, to dispense with the appointment of Auditors. The Auditors will receive such remuneration as may be approved by the Trustees.
- (d) Except as provided by subsection 15.3(b), the Trust is not required to have an auditor. From and after the date of this Indenture, the Trust shall not have an auditor unless and until hereafter appointed pursuant to the provisions of this Section 15.13.

15.14 Change of Auditors

Once appointed, the Auditors may at any time voluntarily resign or may be removed by the Trustees with the approval of Unitholders by way of Ordinary Resolution at a meeting of Unitholders duly called for the purpose. Upon the resignation of the Auditors, new auditors qualified under Section 15.12 may be appointed by the Trustees to act as the auditors of the Trust until the next annual meeting of Unitholders. In the event of the removal of the Auditors by vote of the Unitholders, new auditors shall be appointed by Ordinary Resolution, unless such appointment is dispensed with pursuant to subsection 15.13(c).

15.15 Trust Property to be Kept Separate

The Trustees shall maintain the Trust Property separate from all other property in their possession and not commingled, and to the extent that any Trust Property is in the possession of the Manager or another person, the Manager or such other person shall also be under an obligation to keep the Trust Property separate from all other property and not commingled.

15.16 Trustees May Hold Units

Any Trustee or associate of a Trustee may be a Unitholder, provided, however, that at all times at least one Trustee is not a Unitholder.

15.17 Execution and Effect of Restated Trust Indenture

A restated Trust Indenture, setting forth the terms of this Trust Indenture, as amended to the time of execution, may be executed at any time or from time to time by any two of the Trustees and such restated Trust Indenture as so executed shall thereafter be effective and may thereafter be referred to in lieu of the original Trust Indenture as so

amended; provided, however, that no such execution of a restated Trust Indenture shall be deemed to constitute a termination of the Trust or this Trust Indenture.

15.18 Consolidations

The Trustees may prepare consolidated copies of the Trust Indenture as it may from time to time be amended or amended and restated and any one of the Trustees may certify the same to be a true consolidated copy of the Trust Indenture, as amended or amended and restated.

15.19 Severability

The provisions of this Trust Indenture are severable and if any provisions are in conflict with any applicable law, the conflicting provisions shall be deemed never to have constituted a part of this Trust Indenture and shall not affect or impair any of the remaining provisions thereof. If any provision of this Trust Indenture shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Trust Indenture in any jurisdiction.

15.20 Successors and Assigns

The provisions of this Trust Indenture shall enure to the benefit of, and be binding upon, the parties and their respective successors and assigns.

15.21 Counterparts

This Trust Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

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IN WITNESS WHEREOF this Trust Indenture is executed effective the day and year first set forth above.

<u>(signed) "James E.R. Lord"</u> Witness Name:	{	<u>(signed) "Richard Auchinleck"</u> Richard (Dick) Auchinleck , as a Trustee
<u>(signed) "James E.R. Lord"</u> Witness Name:	{	<u>(signed) "J. Richard Bird"</u> J. Richard Bird , as a Trustee
<u>(signed) "James E.R. Lord"</u> Witness Name:	{	<u>(signed) "J. Lorne Braithwaite"</u> J. Lorne Braithwaite , as a Trustee
<u>(signed) "James E.R. Lord"</u> Witness Name:	{	<u>(signed) "M. Elizabeth Cannon"</u> M. Elizabeth Cannon , as a Trustee
<u>(signed) "Linda Kristensen"</u> Witness Name:	{	<u>(signed) "Patrick D. Daniel"</u> Patrick D. Daniel , as a Trustee
<u>(signed) "James E.R. Lord"</u> Witness Name:	{	<u>(signed) "Gordon G. Tallman"</u> Gordon G. Tallman , as a Trustee
<u>(signed) "James E.R. Lord"</u> Witness Name:	{	<u>(signed) "Wesley R. Twiss"</u> Wesley R. Twiss , as a Trustee
<u>(signed) "Dianne Dohei"</u> Witness Name:		<u>(signed) "Stephen J. Wuori"</u> Stephen J. Wuori , as a Trustee

ENBRIDGE MANAGEMENT SERVICES INC.

Per: (signed) "James E.R. Lord"
Name: James E.R. Lord
Title: Corporate Secretary

ENBRIDGE INCOME FUND, by its
administrator, **Enbridge Management Services
Inc.**

Per: (signed) "Leigh S. Cruess"
Name: Leigh S. Cruess
Title: Vice President, Business Development & CFO

(This is the execution page of the Enbridge Commercial Trust Amended and Restated Trust Indenture dated as of May 1, 2006)

SCHEDULE A

To the Trust Indenture of Enbridge Commercial Trust among the Trustees, the Fund and Enbridge Management Services Inc., as manager, as amended and restated as of May 1, 2006.

CERTAIN MATTERS REQUIRING THE PRIOR APPROVAL OF THE UNITHOLDERS BY ORDINARY RESOLUTION

1. Any matter which under applicable law (including policies of Canadian securities commissions) or applicable stock exchange rules would require the approval of the holders of Units by ordinary resolution (as defined or described therein) had the Trust been a reporting issuer, or equivalent, in the jurisdictions in which the Fund is a reporting issuer, or equivalent, and had the Units been listed for trading on the exchanges where the Ordinary Fund Units are listed for trading, respectively, without regard to exemptions from such laws or rules as may be available to the Trust based on the number of holders of Units or the number of Units held in any such jurisdiction.
2. Subject to Section 7.6, elect the Independent Trustees.
3. Subject to Sections 15.13 and 15.14, appoint, change or dispense with the appointment of the auditors of the Trust.

SCHEDULE B

To the Trust Indenture of Enbridge Commercial Trust among the Trustees, the Fund, and Enbridge Management Services Inc., as manager, as amended and restated as of May 1, 2006.

CERTAIN MATTERS REQUIRING THE PRIOR APPROVAL OF THE UNITHOLDERS BY SPECIAL RESOLUTION

1. Any matter which under applicable law (including policies of Canadian securities commissions) or applicable stock exchange rules would require the approval of the holders of Units by special resolution or super-majority (as defined or described therein) had the Trust been a reporting issuer, or equivalent, in the jurisdictions in which the Fund is a reporting issuer, or equivalent, and had the Units been listed for trading on the exchanges where the Ordinary Fund Units are listed for trading, respectively, without regard to exemptions from such laws or rules as may be available to the Trust based on the number of holders of Units or the number of Units held in any such jurisdiction.
2. Amend this Trust Indenture except as permitted in Article 9.
3. Sell, lease or exchange all or substantially all of the property of the Trust, other than in the ordinary course of business and other than in respect of pursuing consummation or completion of the transactions contemplated by the Prospectus.
4. Authorize the termination, liquidation or winding up of the Trust, other than in the circumstances set forth in Section 11.1.
5. Authorize the combination or merger or similar transaction between the Trust and any other person(s) that is not an affiliate or associate of the Trust if, following such transaction, the holders (or affiliates thereof) of equity interests in such other person (such holders being determined immediately prior to the entering into of such combination, merger or similar transaction) hold, directly or indirectly, more than 50% of the outstanding voting rights attributable to securities of the issuer which results from such combination, merger or other transaction.

SCHEDULE C

To the Trust Indenture of Enbridge Commercial Trust among the Trustees, the Fund and Enbridge Management Services Inc., as manager, as amended and restated as of May 1, 2006.

FORM OF UNIT CERTIFICATE – COMMON UNITS

ENBRIDGE COMMERCIAL TRUST

(A trust constituted under the laws of Alberta)

CERTIFICATE No.: C-____

This certifies that _____ is the registered holder of _____ Common Units issued by Enbridge Commercial Trust. The rights and obligations of the holder of Common Units evidenced by this certificate are set forth in an Amended and Restated Trust Indenture dated as of May 1, 2006, among the trustees of the Enbridge Commercial Trust, the Unitholders thereof, and Enbridge Management Services Inc. (as manager), as such indenture may be amended from time to time (including any complete amendment and restatement thereof) (the “**Trust Indenture**”), and all the terms and conditions of the Trust Indenture are herein incorporated by reference. Capitalized terms used herein but not defined shall have the same meanings as given to such terms in the Trust Indenture.

The holder may not transfer or assign the Common Units represented hereby except as permitted by law and by the terms of the Trust Indenture.

Dated: _____

Per : _____

Name: _____

Office: [**Trustee/office held**]

TRANSFER FORM

For value received, the undersigned hereby sells, assigns and transfers unto _____
_____, _____ Common Units of Enbridge Commercial Trust represented by this
certificate.

DATED _____.

Name of Assignor (please print)

Signature of, or on behalf of, Assignor

Name of Signatory
(if different than name of Assignor)

Title of Signatory (if applicable)

SCHEDULE D

To the Trust Indenture of Enbridge Commercial Trust among the Trustees, the Fund and Enbridge Management Services Inc., as manager, as amended and restated as of May 1, 2006.

FORM OF UNIT CERTIFICATE – PREFERRED UNITS

ENBRIDGE COMMERCIAL TRUST

(A trust constituted under the laws of Alberta)

CERTIFICATE No.: P-____

This certifies that _____ is the registered holder of _____ Preferred Units issued by Enbridge Commercial Trust. The rights and obligations of the holder of Preferred Units evidenced by this certificate are set forth in an Amended and Restated Trust Indenture dated as of May 1, 2006, among the trustees of the Enbridge Commercial Trust, the Unitholders thereof, and Enbridge Management Services Inc. (as manager), as such indenture may be amended from time to time (including any complete amendment and restatement thereof) (the “**Trust Indenture**”), and all the terms and conditions of the Trust Indenture are herein incorporated by reference. Capitalized terms used herein but not defined shall have the same meanings as given to such terms in the Trust Indenture.

The holder may not transfer or assign the Preferred Units represented hereby except as permitted by law and by the terms of the Trust Indenture.

Dated: _____

Per : _____

Name: _____

Office: [**Trustee/office held**]

TRANSFER FORM

For value received, the undersigned hereby sells, assigns and transfers unto _____
_____, _____ Preferred Units of Enbridge Commercial Trust represented by this
certificate.

DATED _____.

Name of Assignor (please print)

Signature of, or on behalf of, Assignor

Name of Signatory
(if different than name of Assignor)

Title of Signatory (if applicable)

SCHEDULE E

To the Trust Indenture of Enbridge Commercial Trust among the Trustees, the Fund, and Enbridge Management Services Inc., as manager, as amended and restated as of May 1, 2006.

ATTRIBUTES OF COMMON UNITS AND PREFERRED UNITS

Defined Terms

All capitalized terms used but not defined in this Schedule E shall have the meanings ascribed to such terms in the Indenture.

1. Common Units

In addition to the rights, privileges, restrictions and conditions attaching to the Common Units as set forth elsewhere throughout the Trust Indenture, the Common Units shall have the further rights, privileges, restrictions and conditions as are set out below:

- (a) **Parity:** Other than as set forth in the Indenture, the rights of all holders of Common Units are equal in all respects, without discrimination, preference or priority among them, including with respect to matters such as payment of distributions, and the distribution of assets of the Trust in the event of any liquidation, dissolution or winding up of the Trust, or other distribution of assets of the Trust for the purpose of winding up its affairs.
- (b) **Voting Rights:** The holders of the Common Units shall be entitled to receive notice of and to attend all annual and special meetings of the Unitholders of the Trust and to one (1) vote in respect of each Common Unit held at all such meetings, except for meetings of Preferred Unitholders called for the purposes set forth in Section 2(b) of this Schedule E.
- (c) **Distributions to Common Unitholders:** The holders of the Common Units shall be entitled to receive distributions in respect of such Common Units held thereby in such amount, character and nature as is in accordance with the provisions of Article 5 of the Trust Indenture and such other provisions of the Trust Indenture as may be applicable. Common Unitholders shall be entitled to receive non-cumulative distributions only if, as and when declared by the Trustees in accordance with the provisions of Article 5 of the Trust Indenture.
- (d) **Participation upon Liquidation, Dissolution or Winding Up:** In the event of the liquidation, dissolution or winding up of the Trust or other distribution of assets of the Trust among its Unitholders for the purpose of winding up its affairs, the holders of the Common Units shall, subject to the rights of the holders of any other

class of Units entitled to receive assets of the Trust upon such a distribution in priority to, or concurrently with, the holders of the Common Units, be entitled to participate in the distribution. Such distribution to which the holders of Common Units are entitled shall be made in equal amounts per Common Unit on all the Common Units at the time outstanding without preference or distinction.

- (e) **Repurchase of Common Units by Trust:** The Trust shall be entitled to offer, and upon acceptance of such offer by the holder of Common Units to whom such offer was made, to purchase for cancellation, at any time, the whole or from time to time any part of the outstanding Common Units in respect of which the offer was accepted, at a price per Common Unit and on a basis as determined, in each case, by the Trustees in their sole discretion but in compliance with all applicable laws, rules and regulations governing same.
- (f) **Rights of Redemption:** The rights, privileges, restrictions and conditions pertaining to (i) the rights of a Common Unitholder to require the Trust to redeem all or any part of the Common Units registered in the name of such Common Unitholder, and (ii) the rights of the Trust to call for redemption of all or any part of the Common Units registered in the names of any of the Common Unitholders (other than Common Units registered in the name of the Fund), are set forth in Article 6 of the Trust Indenture.

2. Preferred Units

In addition to the rights, privileges, restrictions and conditions attaching to the Preferred Units as set forth elsewhere throughout the Trust Indenture, the Preferred Units shall have the further rights, privileges, restrictions and conditions as are set out below:

- (a) **Parity:** The rights of all holders of Preferred Units are equal in all respects, without discrimination, preference or priority among them, including with respect to matters such as payment of distributions, and the distribution of assets of the Trust in the event of any liquidation, dissolution or winding up of the Trust, or other distribution of assets of the Trust for the purpose of winding up its affairs.
- (b) **Voting Rights:** Notwithstanding any provision of this Trust Indenture, except as provided in this Section 2(b) of this Schedule E, no holder of Preferred Units shall be entitled to receive notice of or to attend any meeting of Unitholders or to vote at any such meeting or to vote in respect of any matter whatsoever requiring Unitholder approval pertaining to the Trust (whether at a meeting or by written resolution). The Trust shall call and hold a meeting of Unitholders, at which only Preferred Unitholders may attend and vote separately as a class, where the matter for which approval is being sought is:
 - (i) to amend the rights, privileges, restrictions and conditions attaching to the Preferred Units, including amendments to:

- (1) remove or change prejudicially rights to distributions;
 - (2) add, remove or change prejudicially redemption rights;
 - (3) reduce or remove a distribution preference or a liquidation preference; or
 - (4) add, remove or change prejudicially conversion privileges, options, voting, transfer or pre-emptive rights, or rights to acquire other securities;
- (ii) to carry out and give effect to any action, matter or thing which would affect the holders of Preferred Units in a manner which is different from the holders of the Common Units, which such action, matters or things shall be deemed to include any actions proposed to be taken to:
- (1) increase or decrease the maximum number of authorized Preferred Units, or increase any maximum number of securities of the Trust of a class having rights or privileges equal or superior to the Preferred Units;
 - (2) effect an exchange, reclassification or cancellation of all or part of the Preferred Units;
 - (3) increase the rights or privileges of any securities of the Trust having rights or privileges equal or superior to the Preferred Units;
 - (4) create a new class of securities of the Trust equal or superior to the Preferred Units;
 - (5) make any class of securities of the Trust having rights or privileges inferior to the Preferred Units equal or superior to the Preferred Units;
 - (6) effect an exchange or create a right of exchange of all or part of the securities of another class of securities of the Trust into the Preferred Units; or
 - (7) constrain the issue, transfer or ownership of the Preferred Units or change or remove such constraint;

provided however, in all cases, that any such amendments must also be approved by the Common Unitholders in accordance with the terms of this Indenture.

In addition to those matters set forth in paragraphs 2(b)(i) and 2(b)(ii) above in respect of which the Trust shall call and hold a meeting of Preferred Unitholders, the Trust shall, upon request of the Fund, for the purpose of assisting the Fund (if required) to obtain approval of the Preferred Unitholders prior to the Fund

proceeding with any of the matters referred to in subsections 2(g)(i) or 2(g)(ii) below, call and hold a meeting of Preferred Unitholders for the purpose of obtaining such approval as the Fund may be seeking from the Preferred Unitholders. The applicable provisions of Article 10, applied *mutatis mutandis*, pertaining to the calling and holding of meetings of Unitholders (including, for greater certainty, Section 10.8) shall be applicable to meetings called pursuant to this paragraph.

At all such meetings called for the purpose set forth in the immediately preceding paragraph and at all such meetings called to consider the matters set forth in paragraphs 2(b)(i) and 2(b)(ii) above, matters put forth at such meetings, to be approved, must be approved by Special Resolution of the holders of Preferred Units, voting separately as a class. At all such meetings, each Preferred Unitholder shall be entitled to one (1) vote in respect of each Preferred Unit held thereby. The chairman of any such meeting shall not have a second or casting vote.

- (c) **Distributions to Preferred Unitholders:** Preferred Unitholders shall be entitled to receive non-cumulative distributions if, as and when declared by the Trustees in accordance with the provisions of Article 5 of the Trust Indenture. Notwithstanding any provision of this Indenture to the contrary, in respect of distributions or amounts to be declared payable in respect of a Preferred Unit pursuant to Article 5, such distributions or amounts shall be declared payable and paid by the Trustees in the same currency, amount per Preferred Unit, manner, nature (cash or in-kind), proportions, and character (including out of Income of the Trust, Net Realized Capital Gains, trust capital or other items) as distributions or amounts declared payable and paid in respect of an Ordinary Fund Unit for the same Distribution Period, and at the same times as the distributions declared and paid in respect of each Ordinary Fund Unit for the same Distribution Period.
- (d) **Participation on Liquidation, Dissolution or Winding Up:** In the event of the liquidation, dissolution or winding up of the Trust, or other distribution of assets of the Trust among Unitholders for the purpose of winding up the affairs of the Trust, each holder of Preferred Units shall be entitled to receive from the assets of the Trust a sum equivalent to \$10.00 for each Preferred Unit held by such holder before any amount shall be paid, or any Trust Property shall be distributed, to any holder of Common Units or trust units of any other class ranking junior to the Preferred Units. After payment as provided in this subsection 2(d) has been made to the holders of the Preferred Units, such holders shall have no further entitlement to participate in any further distributions of the Trust Property upon any such liquidation, dissolution or winding up of the affairs of the Trust.
- (e) **Repurchase of Preferred Units by Trust:** The Trust shall be entitled to offer, and upon acceptance of such offer by the holder of Preferred Units to whom such offer was made, to purchase for cancellation, at any time, the whole or from time to time any part of the outstanding Preferred Units in respect of which the offer was

accepted, at a price per Preferred Unit and on a basis as determined, in each case, by the Trustees in their sole discretion but in compliance with all applicable laws, rules and regulations governing same.

(f) **Redemption upon Maturity:** Each of the Preferred Units shall, regardless of the date of issuance thereof by the Trust, mature on June 30, 2033 at which time the Trust shall redeem each then outstanding Preferred Unit for a redemption price per unit of \$10.00.

(g) **Economic Equivalence:**

(i) So long as there are Preferred Units outstanding which are held by persons other than the Fund or its affiliates, the Fund will not, without the prior approval of the holders of the Preferred Units (to be obtained in accordance with the provisions set forth in subsection 2(b) above):

- (1) issue or distribute Fund Units or Exchangeable Securities to the holders of all or substantially all of the then outstanding Fund Units by way of distribution; or
- (2) issue or distribute to the holders of all or substantially all of the then outstanding Fund Units (i) rights, options or warrants, including those entitling the holder to subscribe for or to purchase Fund Units or Exchangeable Securities, (ii) units or securities of the Fund of any class other than Fund Units, (iii) evidences of indebtedness of the Fund; or (iv) assets of the Fund (except in accordance with the redemption provisions of the Fund Units according to their terms);

unless in each case the economic equivalent (as determined by the Trustees as contemplated in subsection 2(g)(iv) on a per unit basis of such rights, options, warrants, units, securities, or other assets is issued or distributed simultaneously to holders of the Preferred Units, in which case, for greater certainty, no approval of the holders of Preferred Units is required hereunder.

(ii) So long as there are Preferred Units outstanding which are held by persons other than the Fund or its affiliates, the Fund will not, without the prior approval of the holders of the Preferred Units (to be obtained in accordance with the provisions set forth in subsection 2(b) above):

- (1) subdivide, redivide or change the then outstanding Fund Units into a greater number of Fund Units; or
- (2) reduce, combine, consolidate or change the then outstanding Fund Units into a lesser number of Fund Units; or

- (3) reclassify, amend the terms of, or otherwise change the Fund Units or effect an arrangement, merger, reorganization or other transaction affecting Fund Units;

unless in each case the same or an economically equivalent change (as determined by the Trustees as contemplated in subsection 2(g)(iv) is made simultaneously to, or in the rights of the holders of, the Preferred Units, in which case, for greater certainty, no approval of the holders of Preferred Units is required hereunder.

- (iii) So long as there are Preferred Units outstanding which are held by persons other than the Fund or its affiliates, the Fund will ensure in the case of any event referred to in subsections 2(g)(i) and 2(g)(ii) that:
- (1) such event is declared or announced by the Fund immediately (and contemporaneously with any announcement of such event to its Unitholders and/or the public) to the Trust and each holder of Preferred Units; and
 - (2) the record date or (if no record date is applicable for such event) the effective date for any such event is not less than ten Business Days after the date on which such event is declared or announced by the Fund pursuant to subparagraph 2(g)(iii)(1) above.
- (iv) The Trustees shall determine, in good faith, economic equivalence for the purposes of any event referred to in subsections 2(g)(i) and 2(g)(ii) and each such determination will be conclusive and binding on the holders of Preferred Units. In making each such determination, the Trustees shall consider, without excluding other factors determined by the Trustees to be relevant, the following factors:
- (1) in the case of any distribution payable in Fund Units, the number of such units issued in proportion to the number of Fund Units previously outstanding;
 - (2) in the case of any subdivision, redivision or change of the then outstanding Fund Units into a greater number of Fund Units or the reduction, combination, consolidation or change of the then outstanding Fund Units into a lesser number of Fund Units or any arrangement, merger, reorganization or other transaction affecting Fund Units, the effect thereof upon the then outstanding Fund Units;
 - (3) in the case of the issuance or distribution of any rights, options or warrants to subscribe for or purchase Fund Units or Exchangeable Securities, the relationship between the exercise price of each such

right, option or warrant and the then market price of an Ordinary Fund Unit;

- (4) in the case of the issuance or distribution of any other form of property (including any units of the Fund of any class other than Fund Units, any evidences of indebtedness, or any assets of the Fund), the relationship between the fair market value (as determined by the Trustees) of such property to be issued or distributed with respect to each outstanding Fund Unit and the market price of an Ordinary Fund Unit; and
 - (5) in all cases, the general tax consequences of the relevant event to the holders of Preferred Units.
- (v) The Trust shall, to the extent required, upon due notice from the Fund of any event referred to in subsections 2(g)(i) and 2(g)(ii) above, take or cause to be taken such steps as may be necessary for the purposes of ensuring that appropriate distributions are made by the Trust, or subdivisions, revisions or changes are made to the Preferred Units, in order to implement the required economic equivalence with respect to the Fund Units and Preferred Units as provided for in this subsection 2(g).

(h) **Liquidity Right:**

Each holder of Preferred Units has the right (“**Liquidity Right**”), exercisable at any time and from time to time in accordance with and subject to the further terms and conditions set forth in this subsection 2(h) of this Schedule E, to request the Trust to purchase from such Preferred Unitholder, for cancellation, all or any portion of the Preferred Units held by such holder. The terms and conditions applicable to the exercise of such Liquidity Right shall be as follows:

- (i) In order to initiate such Liquidity Right, a Preferred Unitholder must deliver a notice (the “**Liquidity Notice**”) to the Trust which specifies that such Preferred Unitholder desires to have the Trust purchase, for cancellation, all or a specified number of the Preferred Units which are, at that time, owned by such holder (such number of Preferred Units as are specified in the Liquidity Notice shall hereafter be referred to as the “**Subject Units**”).
- (ii) Commencing immediately upon receipt by the Trust of a Liquidity Notice, the Trust shall exercise its best efforts to complete or cause the completion of a financing by the Trust or an affiliate thereof (whether debt or equity or a combination thereof, including through issuance of warrants or other securities whatsoever) on terms acceptable to the Independent Trustees and the holder of the Subject Units, each acting reasonably, in order to secure

the necessary funds to enable the Trust to purchase the Subject Units (herein a “**Financing**”).

- (iii) The Preferred Unitholder shall sell and the Trust shall purchase the Subject Units on such Business Day as is designated by the Preferred Unitholder, in its sole discretion, in a written notice provided to the Trust at any time, provided that such day is at least 60 days after receipt by the Trust of the Liquidity Notice (the “**Completion Date**”), and provided further that such purchase and sale (the “**Liquidity Closing**”) shall not take place if the Trust has been unable, after the exercise of best efforts, to complete or cause the completion of a Financing on or before the Completion Date.
- (iv) If the Liquidity Closing is scheduled to proceed, the amount which shall be paid by the Trust to the holder of Preferred Units, on the Completion Date, in respect of the purchase from such holder of the Subject Units owned thereby (the “**Purchase Price**”) shall be calculated as follows:
 - (1) in the event that all or part of the funds to be utilized by the Trust for the purchase of the Subject Units are funded indirectly through an Offering, the Purchase Price shall equal the Actual Net Offering Price Per Unit multiplied by the number of Subject Units; or
 - (2) in the event that none of the funds to be utilized by the Trust for the purchase of the Subject Units are funded through an Offering, the Purchase Price shall equal the Estimated Net Offering Price.
- (v) If the Liquidity Closing is scheduled to proceed, the holder of the Subject Units shall present and surrender on or before the Completion Date, at the registered office of the Trust (or at such other place as may be agreed between such holder and the Trust) the certificate or certificates representing the Subject Units. If the Subject Units only comprise a part of the Preferred Units owned at that time by the holder of such Subject Units, then a new certificate for the balance of the Preferred Units held by such holder (other than the Subject Units) shall be issued to such holder. If the Liquidity Closing does not occur, then the certificate or certificates representing the Subject Units so surrendered in accordance with this paragraph shall be returned to the registered holder of such Subject Units.
- (vi) Subject to (1) the Trust securing the necessary funds to enable the Trust to purchase the Subject Units, on or before the Completion Date, on terms acceptable to the Independent Trustees and the holder of the Subject Units, each acting reasonably, and (2) the receipt by the Trust, as provided in subsection 2(h)(v) above, of certificate(s) representing the Subject Units, the Trust shall purchase the Subject Units on the Completion Date by payment of the Purchase Price to the holder of the Subject Units by wire

transfer to an account specified by such holder (or by such other payment method as is specified by such holder and agreed to by the Trust). Upon receipt of payment of the Purchase Price by the holder of the Subject Units, such holder shall cease to be a holder of the Subject Units and will not be entitled to exercise any of the rights of a holder in respect thereof, except for the right to receive payment of any distributions in respect of the Subject Units which have been declared payable to holders of Preferred Units of record on a date which is prior to the Completion Date. All certificates representing the Subject Units which are purchased pursuant to the terms of this subsection 2(h) shall be cancelled by the Trust and such Subject Units shall thereafter no longer be considered outstanding.

- (vii) The Liquidity Right herein provided for may be exercised by any holder of Preferred Units at any time and from time to time until such time as such holder no longer owns any Preferred Units.